7-5-90
Vol. 55 No. 129

federal register

Thursday
July 5, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

7-5-90
Vol. 55 No. 129
Pages 27627-27798

federal register

Thursday
July 5, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 55 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 55, No. 129
Thursday, July 5, 1990

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

1 CFR
460.....27633
461.....27633

3 CFR
Administrative Orders:
Presidential Determinations:
No. 90-19 of
April 26, 1990.....27627
No. 90-23 of
June 21, 1990.....27629
No. 90-24 of
June 21, 1990.....27631
No. 90-28 of
July 3, 1990.....27797

5 CFR
430.....27760

10 CFR
Proposed Rules:
2.....27645

12 CFR
208.....27762
225.....27762

15 CFR
771.....27760
774.....27760
779.....27760
786.....27760
787.....27760
799.....27760

21 CFR
201.....27776

26 CFR
Proposed Rules:
1.....27648

27 CFR
Proposed Rules:
9 (2 documents).....27652, 27654

32 CFR
199.....27633

40 CFR
228.....27634
Proposed Rules:
52 (2 documents).....27657, 27659
148.....27659
268.....27659

45 CFR
1340.....27638

49 CFR
173.....27640
179.....27640

50 CFR
672.....27643
675.....27643
Proposed Rules:
17.....27662

Federal Register
Vol. 55, No. 129
Thursday, July 5, 1990

Presidential Documents

Title 3—

The President

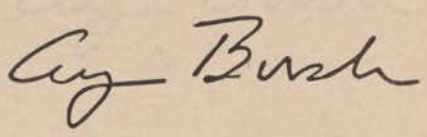
Presidential Determination No. 90–19 of April 26, 1990

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $7,000,000 be made available from the Emergency Refugee and Migration Assistance Fund (Emergency Fund) to meet unexpected urgent needs of Palestinian refugees. This $7,000,000 would be contributed to the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for its programs of relief, education and health care for Palestinian refugees. Without the $7,000,000, UNRWA would be forced to cut essential services to the refugees.

You are authorized and directed to inform the Speaker of the House of Representatives and the appropriate committees of the Congress of this Determination and the obligation of funds under this authority, and to publish it in the **Federal Register.**



THE WHITE HOUSE,
Washington, April 26, 1990.

[FR Doc. 90–15740
Filed 7–2–90; 3:47 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 90–23 of June 21, 1990

Transfer of $16.5 Million in Military Assistance Funds to the Account for Anti-Narcotics Assistance

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 610(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), 22 U.S.C. 2360(a), I hereby determine that it is necessary for purposes of the Act that $16.5 million of funds authorized under Section 3 of the International Narcotics Control Act of 1989 (Public Law 101–231), and appropriated under Section 602 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167), be transferred to, and consolidated with, funds made available to carry out the provisions of Section 481 of the Act, 22 U.S.C. 2291.

You are authorized and directed to report this Determination immediately to Congress, and to publish it in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, June 21, 1990.

[FR Doc. 90–15741
Filed 7–2–90; 3:45 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 90–24 of June 21, 1990

Determination Under Section 231A(a)(3) of the Foreign Assistance Act of 1961, as Amended

Memorandum for the Secretary of State

Pursuant to section 231A(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2191a(a)(3), I hereby determine that the waiver of section 231A(a)(1) with respect to Nicaragua, permitting the Overseas Private Investment Corporation to insure, reinsure, guaranty, and finance projects in Nicaragua, is in the national economic interests of the United States. I therefore direct that the provisions of section 231A(a)(1) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2191a(a)(1)), henceforth be waived with respect to Nicaragua.

You are authorized and directed to report this determination, along with the attached reasons, to the President of the Senate and the Speaker of the House of Representatives, and to publish it in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, June 21, 1990.

[FR Doc. 90–15742
Filed 7–2–90; 3:42 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 55, No. 129
Thursday, July 5, 1990

FEDERAL HOME LOAN MORTGAGE CORPORATION

1 CFR Parts 460 and 461

Government in Sunshine Act and Privacy Act; Removal of Regulations

AGENCY: Federal Home Loan Mortgage Corporation.

ACTION: Removal of regulations.

SUMMARY: The Federal Home Loan Mortgage Corporation ("Freddie Mac") is removing its regulations implementing the Privacy Act and Government in the Sunshine Act. This action results primarily from the enactment of the Financial Institution Reform, Recovery, and Enforcement Act of 1989, which eliminated the necessity for Freddie Mac to maintain Privacy Act regulations. In addition, Freddie Mac has not been subject to the Government in the Sunshine Act for a number of years. As a result of this action, Freddie Mac will no longer maintain regulations covering these matters.

EFFECTIVE DATE: July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Alan Hausman, Legal Department, 759–8405.

SUPPLEMENTARY INFORMATION: On December 27, 1977 and March 17, 1977, Freddie Mac published regulations implementing, respectively, the Privacy Act of 1974, 5 U.S.C. 552a, and the Government in the Sunshine Act, 5 U.S.C. 552b. Pursuant to the requirements of the Financial Institution Reform, Recovery, and Enforcement Act of 1989, Public L. 101–73, 103 Stat. 183 (August 9, 1989), Freddie Mac stockholders elected a new board of directors on February 6, 1990 and ceased to be a Government controlled corporation subject to the Privacy Act. In addition, Freddie Mac has not been subject to the Government in the Sunshine Act for a number of years. Therefore, there is no need to maintain either set of regulations.

Inasmuch as the action taken hereby results from the operation of law, the requirements of 5 U.S.C. 553 relating to notice, public procedure and effective date are unnecessary.

List of Subjects

1 CFR Part 460

Sunshine Act.

1 CFR Part 461

Privacy.

For the reasons set forth above, title 1, chapter IV of the CFR is amended as set forth below.

PART 460—[REMOVED]

PART 461—[REMOVED]

Parts 460 and 461 are removed.

Authority: 12 U.S.C. 1452(c).

Dated: June 28, 1990.

Alan Hausman,

Assistant Secretary.

[FR Doc. 90–15539 Filed 7–3–90; 8:45 am]

BILLING CODE 0000–86–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Eligibility of Former Spouses for Medical Benefits

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This amendment implements the provisions of title 10, U.S.C., 1072(2)(G), concerning the eligibility of former spouses. This amendment is necessary to define the conditions and dates of eligibility for former spouses, to reinforce the fact that former spouses lose their CHAMPUS eligibility upon becoming eligible for Part A of Medicare, or if covered by an employer-sponsored health plan, and to reinforce the fact that former spouses of NATO members are not eligible for CHAMPUS.

EFFECTIVE DATE: September 28, 1988.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: A. Chris Armijo, Office of Program Development, OCHAMPUS Telephone (303) 361–3630.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. 32 CFR part 199 (DoD 6010.8–R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

Section 199.3 defines "dependent" of a member or former member of the uniformed services and outlines the transitional phases of former spouse eligibility based on the date of the decree of divorce, dissolution of marriage, or annulment, and the length of time the former spouse was married to a service member. This amendment implements the provisions of Public Law 100–271, section 645(c), dated March 29, 1988, Public Law 100–456, sections 651 (b), (c), and (d) dated September 29, 1988, and Public Law 101–189, section 731, dated November 29, 1989. Specifically, in the case of those former spouses who were married to a member or former member for at least 20 years, and at least 15 of those married years were creditable in determining the member's eligibility for retired or retainer pay, this amendment establishes that, when the decree of divorce, dissolution or annulment, is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985, or the date of the decree, whichever is later. When the final decree was on or after April 1, 1985, but before September 29, 1988, the former spouse retains eligibility until December 31, 1988, or for two years from the date of the final decree, whichever is later. Further, this amendment stipulates that those former spouses whose final decree of divorce, dissolution, or annulment occurred on or after September 29, 1988, are eligible only for care received within the year immediately following the date of the divorce. Those former spouses who

purchase a DoD designated health insurance policy upon the termination of their normal course of eligibility are eligible for an additional year for those health care services related to a preexisting condition excluded from coverage by the health insurance policy.

Since this amendment implements the legislative requirements, and the dates reflected are those established by the Congress, we are proceeding to the final rulemaking stage. Comments from the general public or from other governmental agencies are welcome and any comments received within 60 days of publication of the final rule and requiring a response will be addressed in a later publication of the **Federal Register.**

This rule was written to implement the law as described above, and will affect only a small category of individuals. We, therefore, certify that this amendment will not have a significant impact on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act.

In compliance with Executive Order 12291, we certify that this is not a major rule and will, therefore, not have a significant impact on the economy.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military Personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.3 is amended by revising paragraph (b)(2)(ii) in its entirety to read as follows:

§ 199.3 Eligibility.

* * * * *

(b) * * *

(2) * * *

(ii) *Former spouse.* There are two groups of former spouses; (*i.e.*, spouses who were married to a military member or former member but whose marriage has been terminated by a final decree of divorce, dissolution, or annulment). To be eligible for CHAMPUS benefits a former spouse must meet the criteria of paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(E) of this section and must qualify under either the group defined in paragraph (b)(2)(ii)(F)(*1*) or (b)(2)(ii)(F)(*2*) of this section.

(A) Must be unremarried;

(B) Must not be covered by an employer-sponsored health plan;

(C) Must have been married to a member or former member who performed at least 20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay;

(D) Must not be eligible for part A of title XVIII of the Social Security Act (Medicare);

(E) Must not be the dependent of a NATO member;

(F) Must meet the requirements of either paragraph (b)(2)(ii)(F)(*1*), or (b)(2)(ii)(F)(*2*) of this section.

(*1*) The former spouse must have been married to the same member or former member for a least 20 years, at least 20 of which were creditable in determining the member's or former member's eligibility for retired or retainer pay. Eligibility continues indefinitely unless affected by any of the conditions in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(E) of this section.

(*i*) If the date of the final decree of divorce, dissolution, or annulment is before February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care received on or before January 1, 1985.

(*ii*) If the date of the final decree of divorce, dissolution of marriage, or annulment was on or after February 1, 1983, the former spouse is eligible for CHAMPUS coverage of health care which is received on or after the date of the divorce, dissolution, or annulment.

(*2*) The former spouse must have been married to the same military member or former member for at least 20 years, and at least 15, but less than 20 of those married years were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(*i*) If the date of the final decree of divorce, dissolution of marriage, or annulment, is before April 1, 1985, the former spouse is eligible only for health care received on or before January 1, 1985, or the date of the divorce, dissolution, or annulment, whichever is later.

(*ii*) If the date of the decree was on or after April 1, 1985, but before September 29, 1988, the former spouse is eligible only for care received from the date of the divorce, dissolution, or annulment until December 31, 1988, or for two years from the date of the divorce, dissolution, or annulment, whichever is later.

(*iii*) If the date of the final decree of divorce, dissolution, or annulment is on or after September 29, 1988, the former spouse is eligible only for care received within the 365 days (366 days in the case of a leap year) immediately following the date of the divorce, dissolution, or annulment.

(*iv*) Former spouses listed under paragraphs (b)(2)(ii)(F)(*2*)(*ii*) or (b)(2)(ii)(F)(*2*)(*iii*) of this section, who purchase a DoD designated health insurance policy upon termination of their eligibility, or within 90 days of termination of their eligibility, under paragraphs (b)(2)(ii)(F)(*2*)(*ii*) or (b)(2)(ii)(F)(*2*)(*iii*) of this section, are eligible for an additional year of coverage at military treatment facilities and under CHAMPUS for preexisting conditions. Preexisting conditions are those for which coverage is denied by the conversion health plan, solely because the conditions existed in the twelve month period prior to the purchase of the conversion insurance policy.

* * * * *

Dated: June 27, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-15544 Filed 7-3-90; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL 3805-4]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is designating two ocean dredged material disposal sites (ODMDS)—commonly named the Southwest Navigation site and Eight-Mile site—located offshore of Grays Harbor, Washington, for the disposal of dredged material removed from the Federal navigation project at Grays Harbor, Washington. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of this material. The proposed designation of the Southwest Navigation site is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur. Use of the Eight-Mile site is expected to be a one-time occurrence over two or three years. The proposed designation for this site is also indefinite, but EPA intends to dedesignate the site after dumping at the site has been completed and monitoring indicates that the material has stabilized.

DATES: This designation will become effective on August 6, 1990.

ADDRESSES: John Malek, Ocean Dumping Coordinator, Region 10, WD–138.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC
EPA Region 10, 1200 Sixth Avenue, Seattle, Washington
U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eighth, Portland, Oregon
U.S. Army Corps of Engineers, Seattle District, 3755 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/442–1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et. seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last updated on February 2, 1990 (55 FR 3688 *et seq.*). These site designations were published as proposed rulemaking on March 22, 1990, in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. 39 FR 16186 (May 7, 1974).

The Corps of Engineers and EPA have prepared a final EIS supplement entitled "Grays Harbor, Washington, Navigation Improvement Project" which was published in February 1989. This document supplements and incorporates by reference a previous Corps EIS entitled, "Grays Harbor, Chehalis and Hoquiam Rivers, Washington, Channel Improvements for Navigation", which was published in September 1982. Subsequent to publication of the final EIS supplement, but prior to the Corps signing a Record of Decision (ROD), the presence of previously-undetected contaminants were found in Grays Harbor sediments. Upon receipt of this information, the Corps, in close cooperation with Region 10, EPA, and the Washington Department of Ecology (Ecology), initiated a program to collect and evaluate sediments from within the Federal navigation channel to determine if any of these sediments presented a threat to the environment or to human health. The results of this testing program were presented in a draft environmental assessment (EA) entitled "1989 Sediment Collection and Testing Program: Grays Harbor, Washington, Navigation Improvement Project", that was circulated to the public for review in December 1989. The final EA was released with a Finding of No Significant Impact (FONSI) signed by the Seattle District Commander on February 15, 1990. Reference to the EA and FONSI was included in the ROD for the EIS supplement which was signed by the North Pacific Division Commander on February 15, 1990. EPA was a cooperating agency in the preparation of the EIS supplement and worked cooperatively with the Corps on design of studies and interpretations of results that were contained in the EA. As allowed by NEPA and in conjunction with this rule, EPA adopts the final EIS supplement and EA to support these ODMDS designations. Anyone desiring a copy of the final documents may obtain them from the address given above. The public comment period for the final EIS supplement closed in June 1989; no comments were received on the ocean dumping or site designation aspects of the project. The comment period for the EA closed January 23, 1990. Seven letters of comment, including EPA's, were received. These six letters were furnished to and reviewed by EPA and the concerns expressed were considered by EPA in our response to the Corps. The final rule fills the same role as the ROD required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

The action discussed in the final EIS supplement included designation for continuing use of one ocean disposal site for dredged material: the Southwest Navigation site. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal. Originally, the Eight-Mile site was to have been designated by the Corps using their authority under section 103 of the MPRSA, with the concurrence of Region 10, EPA. As use was to have been one time, albeit spread over multiple years, formal designation of the Eight-Mile site by EPA was not considered necessary. However, in light of subsequent information, EPA decided that formal designation and post-disposal monitoring of the site was desirable. Accordingly, both sites are proposed for designation.

The EIS supplement discussed the need for the action and examines ocean disposal sites and alternatives to the proposed action, including land-based disposal options.

The EIS supplement and EA provide information to support designation of two ODMDS in the Pacific Ocean off the mouth of Grays Harbor in the State of Washington. The proposed ODMDS are new sites; no interim-designated sites exist for Grays Harbor. Site designation studies were conducted by the Seattle District, Corps of Engineers, in consultation with EPA Region 10. The two ODMDS have been judged to be environmentally acceptable and no significant or long-term adverse environmental effects are predicted to result from the designations. Continuing use of the Southwest Navigation site is anticipated. The site would receive sediments dredged by the Corps to maintain the federally-authorized navigation project at Grays Harbor, Washington, and other dredged materials authorized in accordance with section 103 of the MPRSA. Before any disposal may occur, a specific evaluation by the Corps must be made using EPA's ocean dumping criteria. EPA makes an independent evaluation of the proposal and has the right to disapprove the actual disposal. To date, approval has been given for material dredged during initial construction of the Grays Harbor navigation project.

The study and final designation process were conducted in accordance with the Act, the Ocean Dumping

Regulations, and other applicable Federal environmental legislation.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Description

On March 22, 1990, EPA proposed designation of these sites in the **Federal Register.** The public comment period for the proposed rule closed on May 7, 1990. No letters of comment were received. Two telephone comments were received pointing out a typographic error for the Eight-Mile site coordinates.

The Southwest Navigation site is a parallelogram located approximately 3.9 nautical miles offshore and to the southwest of the entrance to Grays Harbor and occupies an area of about 1.25 square nautical miles. Water depths within the area average between 30 and 37 meters. The coordinates of the site are as follows:

46°52.94′ N., 124°13.81′ W.;
46°52.17′ N., 124°12.96′ W.;
46°51.15′ N., 124°14.19′ W.;
46°51.92′ N., 124°14.96′ W.

The proposed Eight-Mile site is a circle with a radius of 0.40 miles on a central coordiante of 46°57′ N., 124°20.6′ W., located approximately 7.1 nautical miles offshore and west-northwest of the entrance to Grays Harbor. The site occupies an area of about 0.5 square nautical miles. Water depths within the area average between 42 and 49 meters.

If at any time disposal operations at the sites cause unacceptable adverse impacts, further use will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the genral criteria are met.

The sites are acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the final EIS supplement, that a site off the Continental Shelf is not feasible and that no evnironmental benefits would be realized by selecting such a site instead of the sites designated in this action.

The characteristics of the designated sites are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography, and distance from coast.* 40 CFR 228.6(a)(1). The Southwest Navigation site is a parallelogram located approximately 3.9 nautical miles offshore and to the southwest of the entrance to Grays Harbor and occupies an area of about 1.25 square nautical miles. Water depths within the area average between 30 and 37 meters. The coordinates of the site are as follows:

46°52.94′ N., 124°13.81′ W.;
46°52.17′ N., 124°12.96′ W.;
46°51.15′ N., 124°14.19′ W.;
46°51.92′ N., 124°14.96′ W.

The proposed Eight-Mile site is a circle with a radius of 0.40 miles on a central coordinate of 46°57′ N., 124°20.6′ W., located approximately 7.1 nautical miles offshore and west-northwest of the entrance to Grays Harbor. The site occupies an area of about 0.5 square nautical miles. Water depths within the area average between 42 and 49 meters.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult and juvenile phases.* 40 CFR 228.6(a)(2). Aquatic resources are described in detail in the final EIS supplement. The Southwest Navigation site is located in the nearshore oceanic environment and contains aquatic life characteristic of such regions along the coasts of the Pacific Northwest. Biological communities at the site do not appear to be unique or unusual. The dominant taxon within the site, *Owenia fusiformis,* is a tube-building polychaete that is abundant throughout the area. Juvenile crabs are known to use the site, especially during early summer, and initial construction disposal will be allowed only beyond the −120-foot (−37 m) contour during that season to avoid impacts to the resource. Monitoring conducted during initial construction will determine when disposal of maintenance dredged material into the shallower portion of the site might acceptably occur.

The Eight-Mile site is located within a relict gravel deposit which contains no significant benthic fish or invertebrate community. The infaunal community is dominated by the polychaetes, *Mediomastus* spp., and has low biomass, abundance, and taxa richness.

3. *Location in relation to beaches and other amenity areas.* 40 CFR 228.6(a)(3). Both the Southwest Navigation and Eight-Mile sites are far enough removed that use would not affect these amenities.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* 40 CFR 228.6(a)(4). The final designated sites will receive dredged materials transported by either government or private contractor hopper dredges or bottom-dump, sea-going barges towed by tugs. The dredges and barges would be under power and moving during disposal to maintain steerage. Specific information regarding quantities and sources of dredged material is contained in the EIS supplement, EA, and ROD for the navigation improvement project.

Briefly, approximately 2,250,000 cubic yards of initial construction material (consisting primarily of clean sand from the bar reach) would be placed at the Southwest Navigation site over the estimated three-year construction period. Approximately 800,000 cubic yards (again, sands from the bar reach) are expected to be discharged during the first year of maintenance dredging, decreasing through the subsequent four years. After year five, approximately 500,000 cubic yards of maintenance dredging are planned to be disposed at this site annually. Presently, no material from other Grays Harbor navigation project reaches or other projects is planned to be dumped at the Southwest Navigation site; however, there is no reason to limit volumes to be discharged as long as the material is found to be of acceptable quality.

Approximately 2,650,000 cubic yards of initial construction material, consisting of silts and sandy silt from the outer Moon Island, Hoquiam, Cow Point, and Aberdeen reaches, are scheduled to be deposited at the Eight-Mile site during the first and third years of construction. No further use of the Eight-Mile site is currently anticipated and EPA expects to dedesignate the site at some time in the future.

Dredged material for initial construction of the Grays Harbor navigation channel has been tested and determined to be suitable for unconfined open water disposal in the ocean or Grays Harbor estuary. Specific details of the testing program are contained in the 1982 EIS for the project, the 1989 EIS supplement, and the recent EA. Dredged

material scheduled to be discharged at the Southwest Navigation site is considered compatible with the existing substrate. Material destined for the Eight-Mile site consists of a range of grain sizes which are substantially different from the existing, relict gravel substrate at the site. Disposal of these sediments at the Eight-Mile site will change the bottom, but this change is considered acceptable and would have substantially less impact than disposal in alternate locations.

All future proposals for sediment disposal in the ocean are subject to specific evaluation, including independent review by EPA, to avoid or minimize adverse effects.

5. *Feasibility of surveillance and monitoring.* 40 CFR 228.6(a)(5). Both sites are well removed from shore facilities and are located in deep water which increases the difficulty for compliance monitoring and post-disposal monitoring. Proposed monitoring and management plans are contained in appendix B of the EIS supplement. Following formal designation of these ODMDS, EPA and the Corps will develop a specific site management plan which will address post-disposal monotoring. Compliance monitoring to ensure that initial construction material is actually discharged at the appropriate disposal sites will largely be performed by the Corps as part of their contract management responsibilities. However, periodic inspections by EPA are planned. Future compliance monitoring will occur as determined to be necessary.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction, and velocity.* 40 CFR 228.6(a)(6). The nearshore circulation off the Washington coast is influenced by atmospheric conditions and bathymetry, as well as the tidal jet from Grays Harbor. Mean surface currents are southward with an onshore component. However, in deeper water (40–50 m depth) conditions result in a northward flowing current with an offshore component near the sea bottom. The strength of this near-bottom current varies seasonally; however, net overall flow and sediment movement is to the north. Hydrographic structure is similar at both sites with a stratified water column and bottom water containing low DO from late spring through early fall. This is typical throughout the North Pacific coastal region. Near-bottom turbidity layers are common aat the Southwest Navigation site. Water column turbidities are lower at the Eight-Mile site and no near-bottom turbidity layers were observed during designation studies.

Sediments discharged at the Southwest Navigation site would be expected to joint the littoral system and disperse gradually out of the site toward the north and onshore. Disposal will be managed to enhance dispersion and to prevent formation of significant mounds.

Sediments discharged at the Eight-Mile site are expected to form a consolidated cloddy mound which would remain on the site for an unspecified time following disposal. Prior experience with disposal of silty material at Coos Bay, Oregon, suggests that the clumps will break down with winter storm activity and erode. At the Coos Bay site, the material was essentially gone two years following disposal. The material at the Eight-Mile site is expected to gradually move with the bottom currents in a predominantly northward or northwesterly direction.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* 40 CFR 228.6(a)(7). This area has no previous history of ocean dumping. Anticipated effects are disclosed in the EIS supplement and EA. No significant adverse effects are anticipated.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* 40 CFR 228.6(a)(8). No legitimate uses of the ocean would be interfered with as a result of designation of either or both ODMDS or use of these sites. The Southwest Navigation site was located within the navigation lane in order to minimize conflicts with commercial crab fishing operations. Potential interference with ship traffic will be minimized by public disclosure of dredging and disposal operations through Notices to Mariners. Additionally, disposal of initial construction material will occur beyond the −120-foot (−37 m) contour to avoid potential impact to juvenile crabs which tend to congregate between the −100 to −120-foot contours during the summer. Monitoring is planned during construction to determine whether this restriction could be relaxed for future maintenance material disposal.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment of baseline surveys.* 40 CFR 228.6(a)(9). Water quality off the mouth of Grays Harbor is considered excellent, typical of unpolluted seawater along the Pacific Northwest coast.

No significant short- or long-term impacts on water quality are expected to be associated with site designation or disposal operations.

10. *Potentially for the development or recruitment of nuisance species in the disposal site.* 40 CFR 228.6(a)(10). It is highly unlikely that any nuisance species could be transported or attracted to either disposal site as a result of dredging or disposal activities.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* 40 CFR 228.6(a)(11). Both sites are sufficiently far removed that designation or use would not affect these amenities. Given the characteristics of each site, it is unlikely that any shipwrecks would have survived. The existing information was provided to the Advisory Council of Historic Preservation and State Historic Preservation Office.

E. Action

The EIS supplement and EA concluded that the two sites identified in this rule may be appropriately designated for use. The sites are compatible with the general criteria and specific factors used for site evaluation.

The designation of the Southwest Navigation site and Eight-Mile site as EPA-approved Ocean Dumping Sites is being published as final rulemaking. Management of these sites will be delegated to the Regional Administrator of EPA Region 10.

It should be emphasized that, if an ocean dumping site is designated, such as designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping or dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: June 18, 1990.

Thomas P. Dunne,

Acting Regional Administrator for Region 10.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. sections 1412 and 1418.

2. Section 228.12 is amended by adding paragraphs (b)(83) and (b)(84) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(83) Grays Harbor—Southwest Navigation site—Region 10. Location: 46°52.94' N., 124°13.81' W.; 46°52.17' N, 124°12.96' W; 46°51.15' N, 124°14.19' W; 46°51.92' N, 124°14.96' W.

Size: 1.25 square nautical miles.
Depth: 30–37 meters (average).
Primary Use: Dredged material.
Period of Use: Continuing use.
Restrictions: Disposal shall be limited to dredged material determined to be suitable for unconfined disposal from Grays Harbor estuary and adjacent areas. Additional discharge restrictions will be contained in the EPA/Corps management plan for the site.

(84) Grays Harbor—Eight-Mile site—Region 10. Location: Circle with a 0.40 mile radius around a central coordinate at 56°57' N, 124°20.6' W.

Size: 0.5 square nautical miles.
Depth: 42–49 meters.
Primary Use: Dredged material.
Period of Use: One time use over multiple years. Dedesignation of the site is anticipated within five years following completion of disposal and monitoring activities.
Restrictions: Disposal shall be limited to dredged material from initial construction of the Grays Harbor navigation project. Post-disposal monitoring will determine the need and extent of closure requirements.

[FR Doc. 90–15454 Filed 7–3–90; 8:45 am]
BILLING CODE 9999-99-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1340

RIN 0980:AA40

Child Abuse and Neglect Prevention and Treatment Program

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is issuing this final rule to make technical and conforming changes to its rule for the child abuse and neglect program (45 CFR part 1340) to implement the changes made in the Child Abuse and Neglect Prevention and Treatment Act by Public Laws 100–294 and 101–126. The proposed rule was published on March 17, 1989 (54 FR 11246).

EFFECTIVE DATE: August 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mary McKeough, Administration for Children, Youth, and Families, Office of Human Development Services, Department of Health and Human Services, P.O. Box 1182, Washington, DC 20013, (202) 245–0640.

SUPPLEMENTARY INFORMATION:

I. Program Description

In 1974, the Child Abuse Prevention and Treatment Act (Pub. L. 93–247, 42 U.S.C. 5101, *et seq.*) established in the Department of National Center on Child Abuse and Neglect (NCCAN). NCCAN is located organizationally within the Children's Bureau of the Administration for Children, Youth and Families in the Office of Human Development Services.

Under the Act, the NCCAN carries out, among other activities, the following responsibilities:

- Makes grants to States that comply with Federal requirements to implement State child abuse and neglect prevention and treatment programs.
- Funds public or nonprofit private organizations to carry out research, demonstration, and service improvement programs and projects designed to prevent, identify and treat child abuse and neglect.
- Collects, analyzes, and disseminates information, e.g., compiles and disseminates training materials, prepares an annual summary of recent and ongoing research on child abuse and neglect, and maintains a national information clearinghouse.
- Assists States and communities in implementing child abuse and neglect programs.
- Coordinates Federal programs, activities, and information, in part through the Advisory Board on Child Abuse and Neglect and the Inter-Agency Task Force on Child Abuse and Neglect.

Regulations applicable to State and discretionary grants are found at 45 CFR part 1340, with the most recent revision having been published on February 6, 1987 (54 FR 3990).

Each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands are eligible to apply for State grants. We will refer to these jurisdictions as "States" in this preamble discussion.

II. The Notice of Proposed Rulemaking

On March 17, 1989, the Department published, with a sixty day comment period, a notice of proposed rulemaking (NPRM) for the child abuse and neglect program. The NPRM proposed regulations to implement the amendments to the Child Abuse Prevention and Treatment Act (Act) made by Public Law 100–294.

The NPRM contained technical and conforming changes in 45 CFR part 1340 to (1) correct statutory citations because certain sections of the Act were renumbered; (2) revise the waiver provision to extend State eligibility as required by recent legislation; and (3) add an Editorial Note at the beginning of the appendix to Part 1340—Interpretative Guidelines Regarding Services and Treatment for Disabled Infants. The Editorial Note was added as an aid for future reference.

In response to the NPRM, the Department received a total of three letters, each from State human resources agencies in support of the 1988 amendments to the Act and the proposed rules implementing those amendments. The comments in those letters required no changes in the final rule.

However, since publication of the NPRM, the waiver extension provision added by the 1988 amendments to the Act has expired (September 30, 1989). As a result, we are removing paragraph

(c) of § 1340.13 which contains the waiver provision.

In addition, the Act was further amended on October 25, 1989, by Public Law 101–126. This action incorporated the Challenge Grant Program into the Act and renumbered all sections of the Act. The final rule has been changed to reflect the new statutory citations. These changes are found in sections 1340.10–1340.15, in which all citations to "section 8" of the Child Abuse Prevention and Treatment Act have been changed to "section 107" and the citation to "section 14" of the Act has been changed to "section 113."

IV. Impact Analysis

Executive Order 12606: The Family

Executive Order 12606 requires Federal agencies, in formulating and implementing policies and regulations, to assess the impact on family formation, maintenance and general well-being. We believe these proposed regulations will serve to strengthen and preserve the family by assisting agencies and organizations at the State and community levels in their efforts to develop, strengthen, and carry out child abuse and neglect prevention and treatment activities.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or certain other specified effects. Nothing in either the statute or the proposed rule is likely to create substantial costs. Therefore, the Secretary concludes that this regulation is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch. 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Regulatory Flexibility Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Regulatory Flexibility Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed or final rule. This proposed rule does not contain information collection requirements or increase the Federal paperwork burden on the public or the private sector.

V. List of Subjects in 45 CFR Part 1340

Child abuse and neglect, Child welfare, Disabled, Family violence, Grant programs—health, Grant programs—social programs, Handicapped, Reporting and recordkeeping requirements, Research, Technical assistance, Youth.

(Catalog of Federal Domestic Assistance Program Number 13.669, Child Abuse and Neglect Prevention and Treatment)

Dated: April 16, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Approved: June 11, 1990.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, part 1340 is amended as follows:

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

1. The authority citation for part 1340 is revised to read as follows:

Authority: 42 U.S.C. 5101 *et seq.*

2. Section 1340.1(a) is revised to read as follows:

Subpart A—General Provisions

§ 1340.1 Purpose and scope.

(a) This part implements the Child Abuse Prevention and Treatment Act ("Act"). As authorized by the Act, the National Center on Child Abuse and Neglect seeks to assist agencies and organizations at the national, State and community levels in their efforts to improve and expand child abuse and neglect prevention and treatment activities.

* * * * *

3. Section 1340.2(h) is revised to read as follows:

§ 1340.2 Definitions.

* * * * *

(h) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

4. Section 1340.10 is revised to read as follows:

Subpart B—Grants to States

§ 1340.10 Purpose of this subpart.

This subpart sets forth the requirements and procedures States must meet in order to receive grants to develop, strengthen, and carry out State child abuse and neglect prevention and treatment programs under section 107 of the Act.

5. Section 1340.13 is amended by revising paragraph (a)(2) and removing paragraph (c) and the introductory text in paragraph (a) is republished to read as follows:

§ 1340.13 Approval of applications.

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

* * * * *

(2) Either by statute or regulation having the force and effect of law, the State modifies its definition of "child abuse and neglect" to provide that the phrase "person responsible for a child's welfare" includes an employee of a residential facility or a staff person providing out-of-home care no later than the close of the first general legislative session of the State legislature which convenes following February 6, 1987;

* * * * *

6. Section 1340.14(a) is revised to read as follows:

§ 1340.14 Eligibility requirements.

* * * * *

(a) State must satisfy each of the requirements in section 107(b) of the Act.

* * * * *

7. Section 1340.15 is amended by revising paragraphs (a), (b)(1), (c)(1), (c)(4), and (d)(1) to read as follows:

§ 1340.15 Services and treatment for disabled infants.

(a) *Purpose.* The regulations in this section implement certain provisions of the Act, including section 107(b)(10) governing the protection and care of

disabled infants with life-threatening conditions.

(b) *Definitions.* (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 113 of the Act and § 1340.2(d) of this part. The term "medical neglect" includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

* * * * *

(c) *Eligibility requirements.* (1) In addition to the other eligibility requirements set forth in this part, to qualify for a basic State grant under section 107(b) of the Act, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

* * * * *

(4) These programs and/or procedures must be in writing and must conform with the requirements of section 107(b) of the Act and § 1340.14 of this part. In connection with the requirement of conformity with the requirements of section 107(b) of the Act and § 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:

* * * * *

(d) *Documenting eligibility.* (1) In addition to the information and documentation required by and pursuant to § 1340.12 (b) and (c), each State must submit with its application for a basic State grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

* * * * *

8. An Explanatory Note is added at the beginning of the Appendix to Part 1340 to read as follows:

Appendix to Part 1340—Interpretative Guidelines Regarding 45 CFR 1340.15—Services and Treatment for Disabled Infants

Explanatory Note: The interpretative guidelines which follow were based on the proposed rule (49 FR 48160, December 10, 1984) and were published with the final rule on April 15, 1985 (50 FR 14878). References to the "proposed rule" and "final rule" in these guidelines refer to these actions.

Since that time, the Child Abuse Prevention and Treatment Act was revised, reorganized, and reauthorized by Public Law 100-294 (April 25, 1988) and renumbered by Pub. L. 101-126 (October 25, 1989). Accordingly, the definitions formerly in section 3 of the Act are now found in section 113; the State eligibility requirements formerly in section 4 of the Act are now found in section 107; and references to the "final rule" mean references to § 1340.15 of this part.

* * * * *

9. The Appendix is further amended by revising the 3rd paragraph, and the flush reference following the 3rd paragraph of item #6 to read as follows:

* * * * *

6. *The term "not be effective in ameliorating or correcting all of the infant's life-threatening conditions" in the context of a future life-threatening condition.*

* * * * *

Under the definition, if a disabled infant suffers more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions, then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment. H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984).

* * * * *

[FR Doc. 90-15303 Filed 7-3-90; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173 and 179

[Docket No. HM-166W; Amdt. Nos. 173-221, 179-43]

RIN 2137-AA44

Transportation of Hazardous Materials; Miscellaneous Amendments; Correction and Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule; correction and response to petitions for reconsideration.

SUMMARY: In this final rule, RSPA is amending 49 CFR 173.31(a)(5) to extend the compliance date for having vertical restraints systems on certain DOT specification tank cars from November 15, 1990 to November 15, 1992. This amendment is based on the merits of petitions for reconsideration. The effect of this action is to minimize operational impacts on affected tank car shippers and owners by providing an extended implementation period for equipping non-conforming tank cars with the required shelf couplers. RSPA is also amending 49 CFR 179.300-7(a), to restore regulatory text that was inadvertently deleted in a final rule issued under Docket HM-166W (54 FR 38790; September 20, 1989).

EFFECTIVE DATE: August 6, 1990.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Morris, Standards Division, DHM-12, Office of Hazardous Materials Transportation, 400 Seventh Street SW., Washington, DC 20590. (202) 366-4488.

SUPPLEMENTARY INFORMATION: This document reinstates the use of carbon steel plate materials for fabrication of certain tank car tanks. These materials were deleted inadvertently in § 179.300-7(a) Table under a final rule published September 20, 1989 (54 FR 38790) under Docket HM-166W.

In addition, § 173.31(a)(5) is amended in the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) based on the merits of three petitions for reconsideration received in response to the final rule. The three petitioners, the American Petroleum Institute (API), National Industrial Transportation League (NITL), and the Railway Progress Institute Commission on Tank Cars (RPI), requested reconsideration of § 173.31(a)(5), requiring vertical restraint systems (i.e., shelf couplers) on all DOT specification tank cars, including those used for "non-hazardous" materials (i.e., "non-regulated" materials under the HMR). This requirement was proposed in response to an Association of American Railroads petition for rulemaking docketed in HM Docket P-1005. The effective date for the requirement was November 15, 1989.

In particular, petitioners requested reconsideration of that portion of the final rule which would require shelf couplers on DOT specification tank cars currently used to transport materials that are not regulated as hazardous materials. The API petitioned for an extension of the compliance date for this provision from November 15, 1989, to November 15, 1994, on the grounds that there were a large number of DOT specification tank cars used for non-regulated materials that were not equipped with shelf couplers and that additional time would be needed to bring them into compliance.

The NITL alleged lack of authority to adopt the provision and inadequate notice and claimed that the new requirement "* * * will impose an unlawful and impossible burden of compliance on shippers that rely on tank cars to transport non-hazardous

materials." NITL petitioned for an extension of at least one year to ease the burden of compliance. This petition was granted in a correction to the final rule published on November 20, 1989 (54 FR 47986), wherein RSPA indicated that it had intended, but inadvertently failed, to provide a one-year period for conforming to the new requirement. RSPA revised § 173.31(a)(5) in the correction document to provide until November 15, 1990 for tank cars used in non-regulated service.

The RPI requested an immediate stay of the provision, contending that RSPA adopted the provision without adequate notice and comment and without authority in violation of the Administrative Procedure Act, that RSPA arbitrarily and capriciously set an unreasonably short deadline for implementation of that portion of the rule, and that the rule was contrary to the public interest because of the potential disruption of the industry caused by the need to remove cars from service if not retrofitted by November 15, 1989. Following publication of the November 20, 1989, correction document, RSPA was again petitioned by RPI, this time for an extension of the compliance date for tank cars used for non-regualted materials to Novmeber 15, 1994.

DOT Authority Over Specification Packagings Used for Materials Not Subject to the HMR

Both NITL and RPI claim that RSPA does not have authority to regulate packagings which are used for materials not subject to the HMR. The following NITL statement sums up the contentions of both petitioners with regard to DOT's authority:

> Clearly, the Department and RSPA have broad authority to establish regulatory requirements for tank cars transporting hazardous materials, but do not have any authority under the Hazardous Materials Transportation Act to establish requirements for tank cars or any other railroad freight cars used to transport commodities not classified as hazardous materials. To the extent the new regulations issued in this proceeding are susceptible of being interpreted so as to apply to tank cars used for the transportation of non-hazardous materials, they exceed statutory authority and should be modified accordingly.

RSPA is concerned about this serious misunderstanding of its authority because of the implications presented with regard to potential noncompliance with the regulations. Both the Hazardous Materials Transportation Act (HMTA; 49 U.S.C. 1801 *et seq.*) and the HMR explicitly regulate packagings which are represented or marked as suitable for hazardous materials, regardless of whether the packagings are actually used for hazardous materials.

Section 105 of the HMTA, 49 U.S.C. App. 104, gives the Secretary of Transportation authority to regulate any safety aspect of the transportation of hazardous materials including "* * * the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or a container which is *represented, marked,* certified, or sold * * * for use in the transportation of certain hazardous materials." (emphasis added). This authority is reflected in § 171.2(c) which states, in part, that "no person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter * * * whether or not it is used or intended to be used for the transportation of a hazardous material, unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, or retested, as appropriate, in accordance with this subchapter * * *". Display of a DOT specification marking on a package is explicitly deemed to be representation that the package is suitable for those hazardous materials for which the packaging is authorized. (See § 171.2(d)(1).)

RSPA has on several occasions addressed the need for DOT specification packagings to be in full compliance with regulatory provisions, regardless of the materials packaged therein. This was most clearly stated in a notice published April 7, 1983 (48 FR 15127) related to the continuing qualification of specification cargo tanks, as follows:

> If for any reason a cargo tank does not meet the applicable specification under which it was constructed, its specification plate must be removed or rendered illegible thereby removing its certification as a specification cargo tank. The practical consequence of removal of the certification is the fact that the tank ceases to be identified and qualified as a packaging for those hazardous materials that are required to be transported in a specification cargo tank. It must be noted that required removal of the certification is not determined by whether a hazardous material is to be transported in the cargo tank; therefore, those persons in possession of a cargo tank, who are under the jurisdiction of the HMTA and the HMR, must remove the certification when the cargo tank ceases to be in compliance, regardless of the nature of the commodity carried therein.

The provisions of the HMTA and the HMR which are the basis for the foregoing statement are equally applicable to tank cars.

As part of the retrofit program implemented under Docket HM-174, in a final rule published on January 26, 1981 (46 FR 8005), RSPA specifically addressed specification tank cars used for non-regulated materials. In that final rule, provisions were adopted to require the equipping of all Specification 105 tank cars with shelf couplers, regardless of whether they were used for hazardous materials. The retrofit of all Specification 112 and 114 tank cars had been addressed in previous rulemaking. With regard to other specifications, RSPA provided a four-year period for retrofitting tank cars, but stated: "Cars previously built to ICC or DOT specifications that are not in placarded hazardous materials service are not subject to this retrofit requirement unless and until they are placed in such service (see 49 CFR 179.1)." This statement recognized that there was a category of tank car usage that was not being addressed at that time, that is, those specification tank cars not already equipped with shelf couplers, built before March 1, 1981, and used for non-regulated materials.

Since March 1, 1981, all new DOT specification tank cars have been required to have shelf couplers, regardless of the commodities carried. RSPA's actions in the September 20, 1989 final rule under this docket were addressed solely to those previously built tank cars, many of which RSPA and the Federal Railroad Administration (FRA) believe have voluntarily been equipped with shelf couplers as couplers have been changed due to damage in the service environment.

In conclusion, RSPA has clear authority to regulate DOT specification packagings even when not being used for hazardous materials shipments.

Extension of Compliance Date

Both API and RPI requested an extension of the compliance date from November 15,1990 to November 15,1994, for specification tank cars used for non-hazardous materials. RPI stated that its member companies had over 19,000 specification tank cars transporting non-regulated products which were not equipped with shelf couplers. RSPA and FRA have no information that contradicts this estimate.

Based on the large number of tank cars involved, RSPA believes that an extension of the compliance date is justified to ease the burden of compliance on the regulated industry. However, RSPA and FRA do not believe that a five-year implementation period (i.e., from the November 15, 1989 effective date of the rule to November

15, 1994) is warranted. When previous amendments were promulgated under Docket HM-174, it was estimated that over 16,000 Specification 112 and 114 tank cars were equipped with shelf couplers in a six month period (see 46 FR 8005; January 26, 1981). In that retrofit program, tank car owners made arrangements with railroad and other private repair shops along major routes, to help minimize retrofitting delays. In some instances, the shelf couplers were installed at shippers' facilities or railroad sidings, rather than in repair shops. Similar arrangements could be made in the present instance. Alternatively, as indicated in the discussion concerning specification packagings in the cargo tank rulemaking quoted above, specification markings may be removed or obliterated and the tank car tanks would no longer be subject to the requirement for retrofitting.

RSPA concludes that extending the compliance date to November 15, 1992, thus providing a three year implementation period from the November 15, 1989 effective date of the final rule, provides ample time for conforming to the new provisions while addressing safety concerns in a timely fashion. In this final rule, RSPA is amending § 173.31(a)(5) accordingly.

Of course, if, as the compliance date of November 15, 1992 approaches, there are unforeseen difficulties in completing the retrofit despite a good faith effort by the industry, RSPA will consider the need for further extensions of the compliance date.

Notice and Comment

Both NITL and RPI base their petitions in part on an alleged failure of RSPA to adequately notify them of the proposed change to require retrofit of all DOT specification tank cars regardless of commodity. Yet, as NITL noted in its petition, the requirement actually adopted was the same as that proposed. This meets the requirements of the Administrative Procedure Act.

The real concern of NITL and RPI is an alleged misunderstanding on their part about the position taken by the Department with respect to whether the Department would require DOT specification tank cars to continue to conform to the specification requirements regardless of their date of manufacture. This is partly based on alleged DOT staff representations and the practice of phasing in retrofit requirements for tank cars. As already noted, RSPA has phased in extension of the shelf coupler retrofit to the existing tank car fleet. Staggered compliance allows for more orderly retrofit without unreasonable disruption of rail service. The industry has no vested right to continue to represent tank cars as meeting the stringent safety requirements for hauling hazardous materials when the cars do not in fact meet those requirements. In any event, the agency position has been clearly and publicly stated, e.g., the cargo tank notice.

Administrative Notices

RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental entities; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is not considered necessary because the anticipated impact of extending the compliance date is minimal.

Based on information concerning the size and nature of entities likely to be affected by this final rule, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on States, on the Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications as defined in Executive Order 12612 and, therefore, no Federalism Assessment has been prepared.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Regulatory Agenda.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements, Tank cars.

In consideration of the foregoing, 49 CFR parts 173 and 179 are amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

§ 173.31 [Amended]

2. In § 173.31, in paragraph (a)(5), the date "November 15, 1990" is removed and replaced with the date "November 15, 1992".

PART 179—SPECIFICATIONS FOR TANK CARS

3. The authority citation for part 179 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808, 49 CFR part 1, unless otherwise noted.

4. In § 179.300-7, paragraph (a) is revised to read as follows:

§ 179.300-7 Materials.

(a) Steel plate material used to fabricate tanks having heads fusion welded to the tank shell must conform with the following specifications with the indicated minimum tensile strength and elongation in the welded condition. However, the maximum allowable carbon content for carbon steel must not exceed 0.31 percent, although the individual ASTM specification may allow for a greater amount of carbon. The plates may be clad with other approved materials:

Specifications	Tensile strength (psi) welded condition [1] (minimum)	Elongation in 2 inches (percent) welded condition [1] (longitudinal) (minimum)
ASTM A 240 type 304	75,000	25
ASTM A 240 type 304L	70,000	25
ASTM A 240 type 316	75,000	25
ASTM A 240 type 316L	70,000	25
ASTM A 240 type 321	75,000	25
ASTM A 285-69 Gr. A	45,000	29
ASTM A 285-69 Gr. B	50,000	20
ASTM A 285-69 Gr. C	55,000	20
ASTM A 515-69 Gr. 65	65,000	20

Specifications	Tensile strength (psi) welded condition [1] (minimum)	Elongation in 2 inches (percent) welded condition [1] (longitudinal) (minimum)
ASTM A 515–69 Gr. 70	70,000	20

[1] Maximum stresses to be used in calculations.

* * * * *

Issued in Washington, DC on June 28, 1990, under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 90–15501 Filed 6–29–90; 2:59 pm]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050–0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure to directed fishing and request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is establishing a directed fishing allowance for "Other Rockfish" in the Eastern Regulatory Area of the Gulf of Alaska and, because that allowance has been taken is prohibiting further directed fishing for "Other Rockfish" by vessels fishing in that area from 12 noon, Alaska Daylight Time (ADT), on June 30, 1990, through December 31, 1990.

DATES: This notice is effective from 12 noon, ADT, on June 30, 1990, until midnight, Alaska Standard Time, December 31, 1990. Comments will be accepted through July 16, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Under § 672.20(c)(2), when the Regional Director determines that the amount of the TAC of any target species or of the "other species" category that has not been caught during the fishing year is necessary for bycatch in fisheries for other species during the remainder of the fishing year, he may establish a directed fishing allowance for that species or species group, and prohibit directed fishing for that species or species group in the specified regulatory area or district.

The 1990 TAC specified for "Other Rockfish" in the Eastern Regulatory Area is 5,700 mt (55 FR 3223, January 31, 1990). The Regional Director has determined that 505 mt of "Other Rockfish" will be required to provide bycatch for other groundfish species expected to be taken in the Eastern Regulatory Area during the remainder of the fishing year. He establishes a directed fishing allowance of 5,700 mt minus 505 mt, or 5,195 mt. The Regional Director reports that U.S. vessels have caught 5,195 mt of "Other Rockfish" through June 9 in the Eastern Regulatory Area. The directed fishing allowance has been taken.

Therefore, pursuant to §672.20(c)(2), the Secretary is prohibiting further directed fishing for "Other Rockfish" in the Eastern Regulatory Area of the Gulf of Alaska effective 12 noon, ADT, June 30, 1990. After the closure and according to § 672.20(g)(3), amounts of "Other Rockfish" retained on board vessels in the Eastern Regulatory Area at any time during a trip must be less than 20 percent of the total amount of all other fish and fish products retained on board the vessel at the same time during the same trip, as calculated from round weight equivalents.

The entire TAC for "Other Rockfish" in the Eastern Regulatory Area will be reached unless this notice takes effect promptly. If that happened, all "Other Rockfish" taken in the area by other fisheries would be required to be discarded, resulting in considerable wastage. NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited through July 16, 1990. Public comments on this notice of closure may be submitted to the Regional Director at the above address.

Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and Recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 28, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–15500 Filed 6–29–90; 11:36 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 91046–0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the "domestic annual processing (DAP) other fisheries" have attained their secondary prohibited species catch (PSC) allowance of Pacific halibut (3,966 metic tons (mt)) in the Bering Sea and Aleutian Islands (BSAI) area. Therefore, the Secretary of Commerce (Secretary) is prohibiting any further DAP directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in the entire BSAI area. This action is necessary to prevent excessive bycatch of Pacific halibut in the trawl fisheries for groundfish in an area of particular importance to the Pacific halibut stock. This action is intended to carry out the objectives of measures to control the bycatch of prohibited species in the trawl fishery for groundfish.

DATES: This notice is effective from 1200 Alaska Daylight Time, June 30, 1990, through 2400 December 31, 1990. Comments will be accepted through July 16, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett (Resource

Management Specialist), NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802–1668, telephone 907–586–7229.

SUPPLEMENTARY INFORMATION: The Secretary approved, on July 7, 1989, Amendment 12A to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands area (FMP) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 12A was implemented by the Secretary with a final rule published on August 9, 1989, (54 FR 32642) and effective September 3, 1989, through December 31, 1990.

The purpose of Amendment 12A is to limit incidental catches of the prohibited species Tanner crab, red king crab, and Pacific halibut by the trawl groundfish fisheries in the BSAI area. Such incidental catches are referred to as bycatches in fisheries targeting other species. The amendment establishes 20 PSC allowances, 5 PSC allowances in each of the four fisheries: the "domestic annual processing (DAP) flatfish fishery," the "DAP other fishery," the "joint venture processing (JVP) flatfish fishery," and the "JVP other fishery." Each of the 20 PSC allowances prescribed for the 1990 groundfish fisheries are published in the initial specifications notice for 1990 for the BSAI area (55 FR 1434, January 16, 1990). The PSC allowances were based on the anticipated bycatch of prohibited species derived by a mathematical prediction procedure, which used statistical information derived from fishery performance in previous years and projected performance for the 1990 fishing year. The secondary PSC allowance for Pacific halibut in the BSAI area for the "DAP other fishery" is 3,966 mt.

Closure

The Regional Director has determined that the secondary PSC allowance for Pacific halibut for the "DAP other fishery" in the BSAI area will be reached by June 30, 1990. Under regulations implementing Amendment 12A, when the secondary PSC allowance for Pacific halibut for the "DAP other fishery" is reached, the entire BSAI area is closed to further directed fishing for pollock and Pacific cod in the aggregate by DAP vessels using bottom trawl gear for the remainder of the year. Therefore, the Secretary, by this notice and under authority of § 675.21(c)(2)(iv), prohibits for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in any part of the BSAI area (statistical areas 511, 512, 513, 514, 515, 516, 517, 521, 522, 530, and 540) by U.S. fishing vessels that process catch on board or deliver it to U.S. processors. According to § 675.20(h)(1), the operator of a vessel is engaged in directed fishing for pollock and Pacific cod in the aggregate if he retains at any particular time during a trip an amount of these species combined that is equal to or greater than 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip.

NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. Comments on this notice of closure may be submitted to the Regional Director at the address above until July 16, 1990.

Classification

These actions are taken under § 675.20 and § 675.21 and they comply with Executive Order 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–15499 Filed 6–29–90; 11:20 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 129
Thursday, July 5, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD60

Revisions to Procedures to Issue Orders: Challenges to Orders that are Made Immediately Effective

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to revise its regulations governing orders to provide for the expeditious consideration of challenges to orders that are made immediately effective. The proposed amendments specifically allow challenges to the immediate effectiveness of an order to be made at the outset of a proceeding and provide procedures for the expedited consideration and disposition of such challenges. The proposed amendments also require that challenges to the merits of an immediatley effective order be heard expeditiously, except where good cause exists for delay.

DATES: The comment period expires on September 4, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to the Office of the Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Maryland, between 7:45 a.m. and 4:15 p.m. Federal Workdays. Copies of any comments recieved may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC between the hours of 7:45 a.m. and 4:15 p.m. Federal Workdays.

FOR FURTHER INFORMATION CONTACT: John Cho, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-1585.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1990 (55 FR 12370), the Commission published in the **Federal Register** proposed changes to 10 CFR part 2, subpart B. The proposed changes, if adopted, would make clear that the provisions governing the issuance of orders include within their scope all persons subject to the jurisdiction of the Commission, licensees as well as non-licensees. As it exists now, except for orders imposing civil penalties, subpart B addresses issuance of orders only to licensees. Other changes were also proposed to clarify that hearing rights attach only to orders, in contrast to demands to show cause; e.g., demands for explanation or other information. Upon further consideration, the Commission has decided that additional changes should be made to subpart B. These additional changes pertain to orders that are made immediatley effective.

Under current subpart B, as well as under the amendments proposed on April 3, orders can be made immediately effective when required to protect the public health, safety, or interest or when there has been willful misconduct. There are no provisions, however, under the existing rule or under the proposed changes, that specifically require that challenges to such orders, including challenges to the immediate effectiveness of such orders, be heard expeditiously. The revisions proposed herein address this and other related matters.

As the rule is structured, currently and under the April 3 proposal, the recipient of an order may answer it by consenting to the order or by challenging it by demanding a hearing. Where the hearing demand concerns an order that is immediately effective, the person or persons to whom the order is issued are nevertheless required to comply with its provisions pending the completion of the hearing. The imposition of this requirement is necessary to enable the Commission to carry out its responsibility for protecting the public health, safety, and interest. The public health, safety, and interest must be held paramount over any conflicting private interests. At the same time, fairness considerations dictate that the interests of the recipients be accommodated to the extent it can be done without impediment to the Commission's exercise of its responsbility. To this end, the Commission is proposing further changes to § 2.202, in addition to those published on April 3.

The Commission believes that a proper balance between the private and governmental interests involved is achieved by a hearing conducted on an accelerated basis. The revisions proposed herein add a provision to the earlier proposed § 2.202 directing that any requested hearing on an immediately effective order will be conducted expeditiously, giving due consideration to the rights of the parties. Another added provision allows challenges to be made at the outset on the need for immediate effectiveness. Such a challenge can be initiated by a motion by the recipient of the order to set aside the immediate effectiveness of the order.

A motion to set aside immediate effectiveness must be based on one or both of the following grounds: The wilful misconduct charged is unfounded or the public health, safety or interest does not require the order to be made immediately effective. No other ground or challenge is permitted inasmuch as no other ground is relevant. The motion must set out specifically its supporting reasons and must be accompanied by any necessary affidavits providing the factual basis for the request.

The added provision also specifies that a motion to set aside the immediate effectiveness of an order will be decided promptly by the presiding officer (an atomic safety and licensing board or an administrative law judge as designated by the Commission) before the presiding officer takes up any other matter not necessary to the resoluton of that request. To assure prompt decision, the provision establishes short time periods for action by the parties as well as by the presiding officer. It is expected that the presiding officer normally will decide the question of immediate effectiveness solely on the basis of the order and other filings in the record. The presiding officer may call for oral argument. However, an evidentiary

hearings is to be held only if the presiding officer finds the record is inadequate to reach a proper decision on immediate effectiveness. Such a situation is expected to occur only rarely.

In deciding the question of immediate effectiveness under § 2.202 as proposed herein, the presiding officer will apply an adequate evidence standard. This standard is analogous to the evidence necessary to find probable cause to make an arrest, to obtain a search warrant, or to obtain a preliminary hearing on a criminal matter. In a criminal enforcement context, "[p]robable cause is deemed to exist where facts and circumstances within affiant's knowledge, and of which he has reasonabley trustworthy information, are sufficient unto themselves to warrant a man of reasonable caution to believe that an offense has been or is being committed." (*United States* v. *Hill*, 500 F.2d 315, 317 (5th Cir. 1974)). In the context of the proposed rule, adequate evidence is deemed to exist when facts and circumstances within the NRC staff's knowledge, of which it has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe that the charges of willful misconduct, if any, contained in the order are true and/or that the action specified in the order is necessary to protect the public health, safety or interest.

The Commission believes that the "probable cause" standard, adapted as the adequate evidence standard for use in the Commission's proceedings involving challenges to the immediate effectiveness of orders, serves the public interest. Commission orders often deal with willful misconduct or other circumstances that threaten harm to the public health, safety or interest. In some instances, the threat may be imminent. In other instances, while no violation may be involved, information available to the Commission may indicate the need for certain immediate action to provide reasonable assurance that the public health, safety, and interest will be protected. In all cases, it is imperative that the Commission be able to take whatever measures that may be necessary to protect the public health, safety, and interest. The adequate evidence standard for deciding questions of immediate effectiveness enables the Commission to proceed with necessary protective action on the basis of reasonably trustworthy information without having to await the completion of a full hearing on the merits of the order. At the same time, it provides the affected parties a measure of protection against forced compliance, before a hearing, with an order that is insubstantially founded. The adequate evidence standard has been applied to allow an agency to suspend persons from bidding on government contracts (and thus allowing the suspension to remain in effect for a reasonable period without a hearing), where significant governmental interests are involved and the risk of erroneous deprivation of an individual's interest is slight. See *Transco Security Inc.* v. *Freeman*, 639 F.2d 318 (6th Cir. 1981), *cert. denied*, 454 U.S. 820 (1981); *Horne Brothers, Inc.* v. *Laird*, 463 F.2d 1268, (D.C. Cir. 1972). Those same considerations support adoption of the adequate evidence rule here.

The following example illustrates how the Commission intends that the adequate evidence standard will be applied. A common type of order directs a licensee to take or desist from taking certain action because of an asserted willful violation of a license or regulation. An affidavit by a cognizant NRC official that sets forth facts sufficient to lead a reasonably cautious person to believe that the asserted willful violation did occur is sufficient to sustain the immediate effectiveness of the order. As another example, an order directs a licensee to take certain action because the Commission is in possession of information indicating that the ordered action is necessary to protect the public health, safety or interest. Similarly, an affidavit by a cognizant NRC official that sets forth sufficient information to lead a reasonably cautious person to believe that the ordered action is necessary to protect the public health, safety, or interest is sufficient to sustain the immediate effectiveness of the order. This standard does not require evidence by persons with first hand knowledge of the facts. Nor does it call for a balancing of evidence between that provided by the NRC staff and that provided by the person seeking to set aside immediate effectiveness. It is not a preponderance of the evidence test. Rather, if the staff's evidence is sufficient to cause a person of reasonable caution to believe that the order is properly founded, that is, the conduct or activities of the person identified in the order present a public health, safety, or interest threat that requires immediate remedial action, the presiding officer is required to uphold the immediate effectiveness of the order. In this regard, the presiding officer must view the evidence presented in a light most favorable to the staff and resolve all inferences in the staff's favor.

The burden of going forward on the immediate effectiveness issue is with the party who moves to set aside the immediate effectiveness provision. The burden of persuasion on the appropriateness of immediate effectiveness is on the NRC staff.

The Commission intends that a motion to set aside the immediate effectiveness of an order will be the only mechanism for challenging immediate effectiveness. In the circumstance, a presiding officer will not entertain any motion to stay the immediate effectiveness of an order; nor will a presiding officer issue *sua sponte* such a stay. In general, the Commission expects that, through the licensing board's imposition of shortened response periods and expedited filing mechanisms, a motion to set aside immediate effectiveness will be decided within fifteen (15) days of the date the hearing request and accompanying motion are referred to the presiding officer. See 10 CFR 2.772(j).

A presiding officer's order upholding the immediate effectiveness of an order will constitute the final agency action on immediate effectiveness. A presiding officer's order setting aside immediate effectiveness will be referred promptly to the Commission for review and will not be effective pending further order of the Commission.

The Commission's authority under § 2.202 to issue immediately effective orders includes the authority to issue amendatory or supplemental orders that are immediately effective. Section 2.202 will remain the same in this respect. If such an order is issued by the staff after a hearing has been ordered, the licensee or other person affected may move that the immediate effectiveness of the amendatory or supplemental order be set aside pending completion of the hearing on the merits. Such a motion will be given expedited consideration by the presiding officer and decided on the basis described above.

Notwithstanding the factors that call for expedited resolution of disputes arising out of immediately effective orders, there may be instances when overriding public interest considerations require delay in the proceeding on the merits. The revisions proposed herein to the earlier proposed § 2.202 include a provision allowing reasonable delays in the conduct of the proceedings on the merits where good cause exists. As an example of the kind of good cause warranting delay, there may be a need for further investigation by the Commission or the U.S Department of Justice. In such instances, to allow the Commission to investigate further into

the matter or the Department of Justice to undertake criminal investigation without prejudice to possible prosecution of any discovered crime, it may be necessary to hold the hearing on the immediately effective order in abeyance for a reasonable period of time. The proposed revision to § 2.202 allows the Commission, either on motion by the staff or any other party, to delay the hearing in such cases, for such periods as may be appropriate in the circumstances. The proposed revision, however, does not authorize delay in the proceeding on a motion to set aside immediate effectiveness. The length of a delay in the proceeding on the merits should be based on a balance of the competing interests involved. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434 (1982). Such a motion will be expeditiously heard and decided.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The existing regulations in 10 CFR 2.202 authorize the NRC, through its designated officials, to institute a proceeding to modify, suspend, or revoke a license by service of an order to show cause on a licensee. The regulations, as currently written, do not provide procedures for the NRC to take direct action against unlicensed persons whose willful misconduct causes a licensee to violate Commission requirements or places in question reasonable assurance of adequate protection of the public health and safety, although such action is authorized by the Atomic Energy Act of 1954, as amended.

On April 3, 1990 (55 FR 12370), the Commission proposed amendments to make the Commission's Rules of Practice more consistent with the Commission's existing statutory authority and to provide the Commission with the appropriate procedural framework to take action, in appropriate cases, in order to protect the public health and safety. The proposed amendments also were to make clear the distinction between orders—e.g., directions to take or desist from taking certain actions—and demands for information. Only orders were proposed to be made immediately effective and subject to hearing, consistent with existing regulations. Neither the existing regulations nor the proposed amendments, however, contained provisions requiring that any such hearing be conducted expeditiously. The amendments proposed by this rulemaking supplement the earlier proposal by adding provisions directing the expeditious conduct of any hearing on an immediately effective order but allowing delays in the conduct of such hearings in certain circumstances where good cause for delay is shown, and establishing a separate, informal procedure for dealing rapidly with challenges to the immediate effectiveness of such order.

The proposed rule constitutes the preferred course of action and the cost involved in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the procedural mechanism for dealing with orders that are made immediately effective. The proposed rule, by itself, does not impose any obligations on entities including any regulated entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards found in 13 CFR part 121. Such obligations would not be created until an order is issued, at which time the person subject to the order would have a right to a hearing in accordance with the regulations.

Backfit Analysis

This proposed rule does not involve any new provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Accordingly no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Sec. 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b)), (i), (o), 2236), 2282); sec. 206 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section 2.202 is revised to read as follows:

§ 2.202 Order.

(a) The Commission may institute a proceeding to modify, suspend, or revoke a license or to take such other action as may be proper by serving on

the licensee or other person subject to the jurisdiction of the Commission an order that will:

(1) Allege the violations with which the licensee or other person subject to the Commission's jurisdiction is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed;

(2) Provide that the licensee or other person must file a written answer to the order under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the order;

(3) Inform the licensee or other person of his or her right, within twenty (20) days of the date of the order, or such other time as may be specified in the order, to demand a hearing on all or part of the order, except in a case where the licensee or other person has consented in writing to the order;

(4) Specify the issues for hearing;

(5) State the effective date of the order, and

(6) Provide, for stated reasons, that the proposed action be immediately effective, pending further order, where the Commission finds that the public health, safety or interest so requires or that the violation or conduct causing the violation is willful.

(b) The licensee or other person to whom the Commission has issued an order under paragraph (a) of this section must respond to the order by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation or charge made in the order, and shall set forth the matters of fact and law on which the licensee or other person relies, and, if the order is not consented to, the reasons as to why the order should not have been issued. Except as provided in paragraph (d) of this section, the answer may include a demand for a hearing.

(c)(1) If a hearing is demanded, the Commission will issue an order designating the time and place of hearing. If a hearing is demanded with respect to an immediately effective order, the hearing will be conducted expeditiously, giving due consideration to the rights of the parties.

(2) The licensee or other person to whom the Commission has issued an order may, in addition to demanding a hearing, move to set aside the immediate effectiveness of the order. The motion shall state with particularity the reasons why the immediate effectiveness of the order should be set aside and shall be accompanied by affidavits or other evidence relied on. The Commission staff shall respond within (5) days of the filing of the motion. The motion shall be decided by the presiding officer expeditiously before any other matter unnecessary to the disposition of the motion. The presiding officer shall exercise its powers to regulate the conduct of the proceeding, including reducing the times specified in subpart G for particular actions, to assure expeditious consideration and disposition of the motion. During the pendency of the motion or at any other time, the presiding officer shall not stay the immediate effectiveness of the order, either on its own motion, or upon motion of the licensee or other person. The presiding officer shall uphold the immediate effectiveness of the order if it finds that there is adequate evidence to support immediate effectiveness. An order upholding immediate effectiveness will constitute the final agency action on immediate effectiveness. An order setting aside immediate effectiveness will be referred promptly to the Commission itself and will not be effective pending further order of the Commission.

(3) Except as provided in paragraph (c)(2) of this section, the Commission may, on motion by the staff or any other party to the proceeding, where good cause exists, delay the hearing on the immediately effective order at any time for such periods as are consistent with the due process rights of the licensee and other affected parties.

(d) An answer may consent to the entry of an order in substantially the form proposed in the order with respect to all or some of the actions proposed in the order. The consent of the licensee or other person to whom the order has been issued to the entry of a consent order shall constitute a waiver by the licensee or other person of a hearing, findings of fact and conclusions of law, and of all right to seek Commission and judicial review or to contest the validity of the order in any forum as to those matters which have been consented to or agreed to or on which a hearing has not been requested. The consent order shall have the same force and effect as an order made after hearing by a presiding officer or the Commission, and shall be effective as provided in the order.

(e) If the order involves the modification of a Part 50 licensee and is a backfit, the requirements of § 50.109 of this chapter shall be followed unless the licensee has consented to the action required.

Dated at Rockville, Maryland, this 28th day of June 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-15603 Filed 7-3-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-005-90]

RIN 1545-AO46

Returns Relating to Certain Changes in Corporate Control or Capital Structure

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: If any person acquires control of a corporation or if a corporation has a recapitalization or other substantial change in capital structure, section 6043(c) of the Internal Revenue Code (Code) provides that, when required by the Secretary, the corporation shall make a return setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction. Section 6043(c) was added to the Code by the Omnibus Budget Reconciliation Act of 1989. This document contains proposed regulations under section 6043(c) concerning reporting requirements under that section.

DATES: Written comments and requests for a public hearing must be received by August 6, 1990. The regulations are proposed to apply to transactions occurring after March 31, 1990.

ADDRESSES: Send comments or requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R [CO-005-90], Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:1) or telephone 202-566-3367 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the

Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information and suggestions for reducing the burden should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirement in these regulations is in proposed § 1.6043–4(a), reflected in the requirement that certain corporations file a return on Form 8820. This information is needed by the Internal Revenue Service to implement section 6043(c) of the Code. The respondents will be certain corporations for which there has been a transaction of $10,000,000 or more involving a substantial change in the corporation's capital structure or an acquisition of control of the corporation.

The estimated total reporting burden and the estimated average burden per respondent will be reflected on Form 8820. Response will be on occasion and the estimated annual number of respondents is 10,000.

Background

This document proposes regulations to be added to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) under section 6043(c) of the Code. The regulations are proposed to be issued under the authority of section 6043(c), as added by section 7208(b)(1) of the Omnibus Budget Reconciliation Act of 1989, Public Law No. 101–239, and under the authority of section 7805(a).

Explanation of Provisions

Section 6043(c) provides that if any person acquires control of a corporation, or if a corporation has a recapitalization or other substantial change in capital structure, the corporation, when required by the Secretary, shall make a return setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

A. Transactions to be Reported

The proposed regulations require that a corporation file a return on Form 8820 setting forth certain required information. As proposed, the form must be filed on or before the 15th day of the fourth month following the month in which a reportable transaction occurs or, if later, 120 days after the date of the Internal Revenue Bulletin in which the Internal Revenue Service has announced that Form 8820 is available to the public. The proposed regulations provide that a reportable transaction is either an acquisition of control of the corporation or a substantial change in the capital structure of the corporation. The proposed regulations further provide that a related transaction means (i) in the case of an acquisition of control by a person, any other acquisition of stock of the corporation, directly or indirectly, by the person or the corporation during the 365-day period ending on the date on which control is acquired; or (ii) in the case of a substantial change in capital structure, any other change in capital structure during the 365-day period ending on the date of the substantial change in capital structure.

The proposed regulations define control by reference to section 304(c)(1). In determining whether an acquisition of control has occurred, the proposed regulations apply the constructive ownership rules of section 318(a) (except that section 318(a)(4), which provides for constructive ownership through an option to acquire stock, does not apply), as modified by section 304(c)(3)(B).

No return would be required for an acquisition of control if, during the 365-day period ending on the date on which control is acquired, the fair market value of the stock acquired in that transaction and any related transactions, as of the date or dates on which stock is acquired, aggregates to less than $10,000,000. In addition, no return would be required for an acquisition of control if the acquisition consists of the receipt of stock upon the organization of the corporation in a single transaction or series of transactions ending no more than 365 days after the first issuance of stock by the corporation.

As proposed, a corporation undergoes a substantial change in capital structure if (i) the corporation undergoes a change in capital structure, as defined in the proposed regulation; and (ii) the total fair market value of stock and value of debt (as defined in the proposed regulation), as of the date or dates on which the stock or debt is issued or distributed, is $10,000,000 or more.

A corporation undergoes a change in capital structure under the proposed regulations if the corporation (i) exchanges its stock for its debt or for its stock; (ii) exchanges its debt for its stock; (iii) distributes stock in a transaction described in section 305(b); (iv) distributes stock described in section 306(c); (v) distributes its stock or its debt, or the stock or debt of a controlled corporation (within the meaning of section 355) in a reorganization under section 368(a)(1) or a transaction under section 355; or (vi) has a significant net issuance of debt.

As proposed, a corporation has a significant net issuance of debt if, as of a date on which debt is issued, the value of the debt issued by the corporation during the 365-day period ending on that date exceeds the value of its debt retired during the same period by more than 50 percent of the value of the corporation's total long-term debt and owners' equity, as shown on the corporation's applicable statement of financial position. The applicable statement of financial position means a statement, for any date during the 365-day period, determined under principles similar to those of section 56(f)(3) (A) and (C). If the corporation has 2 or more statements described in the clause or subclause of section 56(f)(3)(A) with the lowest numerical designation, the applicable statement of financial position would be the one showing the lowest value of total long-term debt and owners' equity. The proposed regulations provide that certain debt incurred in the ordinary course of business, and in acquiring certain property, will not be taken into account in determining whether a significant net issuance of debt has occurred.

The proposed regulations provide that the Internal Revenue Service may specify by revenue procedure additional transactions for which returns on Form 8820 will be required. Reporting requirements established by revenue procedure will apply only to transactions completed more than 30 days after the date on which the revenue procedure is published in the Internal Revenue Bulletin.

The proposed regulations provide that a reportable transaction, and any related transaction, shall not be taken into account in determining whether a return on Form 8820 is required for any transaction subsequent to the reportable transaction. Furthermore, it is intended that if, by reason of acquiring control of a corporation, a person also indirectly acquires control of a corporation controlled by the first corporation, only the first corporation is required to file Form 8820 with respect to the transaction.

For the penalties for failure to file Form 8820 (including provision for waiver of those penalties), see section 6652(1). In addition, as is true generally with respect to reporting obligations, the

criminal penalties of sections 7203, 7206 and 7207 would, in appropriate cases, apply to violations involving Form 8820.

B. Form 8820

It is expected that Form 8820 will require the following information: (i) The identities (including the employer identification or taxpayer identification numbers) of the corporation that has undergone the transaction giving rise to the filing requirement, of any other parties to the transaction or related transactions (other than public shareholders or debtholders who do not actively participate in the transaction), and of any common parent of a group (as defined in the instructions) of which any of these entities is a member; (ii) an indication of the type of transaction for which the return is filed (e.g., stock purchase, debt issuance, etc.); (iii) a schedule of stock or debt transferred, issued, distributed, or redeemed in the transaction or in related transactions, including the fair market value of the stock or value of the debt, and other identifying information with respect to that stock or debt; (iv) a description, including the amount and form, of fees paid to persons who provided services in connection with the transaction or related transactions, including but not limited to merchant bankers, investment bankers, underwriters, consultants, persons who appraised or valued any property or stock in connection with the transaction, attorneys, accountants, and investment advisors; and (v) an identification of any parties to the transaction or related transactions (other than public shareholders or debtholders who do not actively participate in the transaction) that are foreign persons or tax-exempt entities.

Special Analyses

It has been determined that these proposed regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. In addition to any other comments the public may wish to make on the proposed regulations, the Service is particularly interested in comments concerning (i) the types of information proposed to be required by Form 8820, and (ii) the types of transactions for which the regulations require reporting. In this connection, the Service is considering, and requests comment on, whether additional reporting requirements under section 6043(c) are needed with respect to corporations in bankruptcy, in order to identify leveraging transactions not otherwise covered by the proposed regulations. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Keith E. Stanley, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * § 1.6043–4 also issued under 26 U.S.C. 6043(c).

Par. 2. A new § 1.6043–4 is added in the appropriate place to read as follows:

§ 1.6043–4 Information Returns Relating to Certain Changes in Corporate Control or Capital Structure.

(a) *General rule.* Except as otherwise provided in this section, a corporation shall file a return on Form 8820, setting forth such information as the form shall require, if a reportable transaction occurs. A reportable transaction is either an acquisition of control of the corporation, as defined in paragraph (c) of this section, or a substantial change in capital structure of the corporation, as defined in paragraph (d) of this section. The return is due on or before the 15th day of the fourth month following the month in which the reportable transaction occurred (or, if later, 120 days after the date of the Internal Revenue Bulletin in which the Internal Revenue Service announces that Form 8820 is available to the public).

(b) *Excluded corporations.* No return is required under this section for an acquisition of control or a substantial change in capital structure of—

(1) Any regulated investment company within the meaning of section 851,

(2) Any real estate investment trust within the meaning of section 856, and

(3) Any foreign corporation, unless 25 percent or more of its gross income from all sources for the 3-year period preceding the reportable transaction (or for the part of that period during which the corporation was in existence) was effectively connected (or treated as effectively connected, other than income described in section 884(d)(2)) with the conduct of a trade or business in the United States.

(c) *Acquisition of control of a corporation*—(1) *In general.* For purposes of this section, control of a corporation is acquired by a person if—

(i) Before an acquisition of stock of the corporation, directly or indirectly, by the person or by the corporation, the person does not have control (as defined in the first sentence of section 304(c)(1)) of the corporation, and

(ii) After the acquisition, the person does have control (as defined in the first sentence of section 304(c)(1)) of the corporation.

(2) *Constructive ownership.* For purposes of this paragraph (c), the constructive ownership rules of section 318(a) (except for section 318(a)(4), providing for constructive ownership through an option to acquire stock), modified as provided in section 304(c)(3)(B), shall apply.

(3) *Person includes group.* For purposes of this paragraph (c), when two or more persons act together for the purpose of acquiring stock or control of a corporation, those persons shall be treated as a single person.

(4) *Exceptions*—(i) *Organization of corporation.* No return is required under this section for an acquisition of control of a corporation if the transaction consists of the receipt of stock upon the organization of the corporation in a single transaction or series of transactions ending no more than 365 days after the first issuance of stock by the corporation.

(ii) *Acquisitions involving less than $10,000,000.* No return is required under this section for an acquisition of control of a corporation if the fair market value of the stock acquired in the transaction and in any related transactions (as defined in paragraph (e) of this section), as of the date or dates on which the stock was acquired, is less than $10,000,000.

(d) *Substantial change in capital structure*—(1) *In general.* A corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the sum of the fair market value of stock and the value of debt issued or distributed in the transaction and in any related transactions (as defined in paragraph (e) of this section), as of the date or dates on which the stock or debt is issued or distributed, is $10,000,000 or more. For purposes of this paragraph (d), the value of debt is the greater of its fair market value or—

(i) Its stated principal amount, if there is adequate stated interest (as defined in section 1274(c)(2)), or

(ii) Its imputed principal amount (as defined in section 1274(b)).

(2) *Change in capital structure*—(i) *In general.* For purposes of this section, a corporation has a change in capital structure if the corporation—

(A) Exchanges its stock for its debt or for its stock;

(B) Exchanges its debt for its stock;

(C) Distributes stock in a transaction described in section 305(b);

(D) Distributes stock described in section 306(c);

(E) Distributes its stock or its debt, or stock or debt of a controlled corporation (within the meaning of section 355), in a reorganization under section 368(a)(1) or a transaction under section 355; or

(F) Has a significant net issuance of debt, as defined in paragraph (d)(2)(ii) of this section.

(ii) *Significant net issuance of debt*—(A) *In general.* For purposes of this paragraph (d)(2), a corporation has a significant net issuance of debt if, during the 365-day period ending on a date on which debt is issued, the value of the debt issued by the corporation exceeds the value of the debt retired by the corporation (in each case as of the date or dates of issuance or retirement) by more than 50 percent of the sum of the corporation's long-term debt (determined without regard to paragraph (d)(2)(ii)(B) of this section) and owners' equity, as shown on the corporation's applicable statement of financial position. The applicable statement of financial position means a statement of financial position, determined according to principles similar to those of section 56(f)(3) (A) and (C), for any date during the 365-day period. If the corporation has 2 or more statements of a type described in the clause (or subclause) of section 56(f)(3)(A) with the lowest number designation, the applicable statement of financial position is the one that shows the smallest sum of long-term debt and owners' equity.

(B) *Certain debt not taken into account.* For purposes of this paragraph (d)(2)(ii), debt does not include—

(*1*.) Debt incurred in the ordinary course of business to acquire or carry goods or services, to the extent that the aggregate value of the debt does not exceed the fair market value of the goods or services, if—

(*i*) The debt is incurred substantially contemporaneously with the acquisition of the goods or services, and

(*ii*) The debt is reasonably expected to be repaid in full by the corporation within one year from the date on which it was incurred;

(*2*) Debt incurred in the ordinary course of business and secured by accounts receivable, to the extent that the aggregate value of the debt does not exceed the fair market value of the accounts receivable;

(*3*) Debt incurred in acquiring, constructing, or substantially improving any asset (other than stock of the corporation) and secured by that asset, to the extent that the aggregate value of the debt does not exceed the fair market value of the asset (or, in the case of a substantial improvement, does not exceed the cost of the improvement); or

(*4*) Debt resulting from the refinancing of debt meeting the requirements of this paragraph (d)(2)(ii)(B) (including this paragraph (d)(2)(ii)(B)(*4*)), provided that—

(*i*) The value of the debt resulting from the refinancing does not exceed the value of the refinanced debt on the date of the refinancing;

(*ii*) In the case of any initial or subsequent refinancing of a debt that was described in paragraph (d)(2)(ii)(B) (*2*) or (*3*) of this section, the refinanced debt is secured by the asset described in paragraph (d)(2)(ii)(B) (*2*) or (*3*) of this section; and

(*iii*) In the case of any initial or subsequent refinancing of a debt that was described in paragraph (d)(2)(ii)(B)(*1*) of this section, the refinanced debt is reasonably expected to be repaid in full by the corporation within one year of the date on which the original debt was incurred.

(3) *Stock.* For purposes of this paragraph (d), stock includes all rights to acquire stock.

(e) *Related transaction.* For purposes of this section, the term related transaction means—

(1) In the case of an acquisition of control of a corporation, any other acquisition of stock of the corporation, directly or indirectly, by the person acquiring control or by the corporation, during the 365-day period ending on the date of the acquisition of control; or

(2) In the case of a change in capital structure (as defined in paragraph (d)(2) of this section), any other change in the capital structure (as defined in paragraph (d)(2) of this section) of the corporation during the 365-day period ending on the date of the change in capital structure.

(f) *No double-counting of transactions.* No reportable transaction or any related transaction shall be taken into account in determining whether a return on Form 8820 is required for any transaction subsequent to the reportable transaction.

(g) *Additional transactions specified in revenue procedure.* The Internal Revenue Service may by revenue procedure specify transactions, in addition to those described in this regulation, for which returns on Form 8820 will be required. Reporting requirements established under this paragraph (g) will apply only to transactions completed more than 30 days after the date of the Internal Revenue Bulletin in which the revenue procedure setting forth the filing requirement is published.

(h) *Penalties for failure to file.* For the penalties for failure to file Form 8820, see section 6652(l). In addition, as is true generally with respect to reporting obligations, the criminal penalties of sections 7203, 7206 and 7207 would, in appropriate cases, apply to violations involving Form 8820.

(i) *Effective date.* This section applies to transactions occurring after March 31, 1990.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * *
§ 301.6043(c)–1 is also issued under 26 U.S.C. 6043(c).

Par. 4. A new § 301.6043(c)–1 is added in the appropriate place to read as follows:

§ 301.6043(c)–1 Information Returns Relating to Certain Changes in Corporate Control or Capital Structure.

For provisions relating to the requirement that a corporation file a return of information if control of the corporation is acquired by a person or if the corporation has a substantial change in capital structure, see § 1.6043–4 of this chapter (Income Tax Regulations).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90–15452 Filed 7–3–90; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 705]

RIN 1512–AA07

San Ysidro District Viticultural Area; Proposed Establishment

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Santa Clara County, California, to be known as "San Ysidro District." This proposal is the result of a petition filed on behalf of the proprietors of two vineyards in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to designate the specific grape-growing area in which the grapes used in their wines were grown and will enable consumers to better identify wines they purchase.

DATE: Written comments must be received by August 20, 1990.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 REF: Notice No. 705.

Copies of written comments received in response to this notice will be available during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marjorie Dundas, Wine and Beer Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising in title 27, Code of Federal Regulations, part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area area to be used as an appellation of origin of wine labels and advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added to title 27 a new part 9 for the listing of approved American viticultural areas. Section 4.25a(e)(1) of 27 CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition AFT to establish a grape-growing region as a viticultural area. The petition shall include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF initially received a petition from Mr. Barry Jackson of Harmony Wine Co. proposing, on behalf of the owners of the Mistral Vineyard and the San Ysidro Vineyard, the establishment of a viticultural area in Santa Clara County, California, to be know as "San Ysidro". The petitioner subsequently amended the petition to request that the name be changed to "San Ysidro District." This proposed viticultural area is located in southern Santa Clara County, California, about four miles east of the town of Gilroy. There are approximately 520 acres planted to winegrape varieties at the two commercial vineyards within the 2,340 acre area. The petitioner provided the following information as evidence that the proposed area meets the regulatory criteria.

Evidence of Name

The petitioner provided documentation from various sources to support the name "San Ysidro." The four U.S.G.S. maps which contain portions of the proposed area all use the name San Ysidro to describe an area somewhat larger than the proposed area. The petition states that the name San Ysidro derives from the name of the original Spanish rancho granted in 1809 or 1810 by Governor Arrillaga to Ignacio Ortega. The petitioner also submitted an article from the February, 1988 edition of Wines and Vines entitled "Special Wines from San Ysidro Vineyard," which states that there are "two vineyards in the San Ysidro area, San Ysidro itself and the Mistral Vineyard; each vineyard has about 250 planted acres. The San Ysidro growing area is located in a cool microclimate east of Hollister in Santa Clara county, south of San Francisco".

In support of the name "San Ysidro District," the petitioner submitted an article entitled "Winery shines in Santa Clara—Awards boost Congress Springs' reputation," (*San Jose Mercury News*, June 7, 1988) which refers to vineyards in the "San Ysidro District, which is cooled by sea breezes that find their way inland by way of Watsonville."

Local Viticultural History

Until the turn of the century, the dominant agricultural activity in the area was dairying. From 1876 to the early 1930's, although dairying remained important, some orchards and vineyards were planted. Beginning in the late 1930's, increased awareness of the benefits of a cool climate in the growing of premium white varietals led to a gradual increase in the amount of land on which grapes were commercially grown.

There are two commercial vineyards within the proposed viticultural area: Mistral Vineyard and San Ysidro Vineyard. The two vineyards comprise

approximately 520 acres under cultivation. There are currently five wineries producing vineyard designated wines from the area.

Geographical/Climatological Features

The San Ysidro District is entirely within the Santa Clara Valley viticultural area which was established by T.D. ATG–286. The proposed area lies to the east of the town of Gilroy, on the eastern edge of the Santa Clara Valley and in the foothills of the Diablo Range. The San Ysidro Creek runs through the vineyards and is part of the upper watershed for the Pajaro River. This proximity to the Pajaro River and the resultant effect on the microclimate at San Ysidro is the primary factor distinguishing this area from the rest of the Santa Clara Valley. The Pajaro Gap and Chittenden Pass, through which the river flows, act as a funnel for cool maritime air being pulled into the San Joaquin Valley through the Pacheco Pass. Because of the cool ocean air flowing over the area, fog in the San Ysidro District area is subject to earlier accumulation in the evening and later burn-off in the morning than in the surrounding area. This maritime influence also results in afternoon breezes that moderate the daily high temperature, even during summer months. The average temperature, due to the marine influence, is 2085 degree-days. This corresponds to a Region I climate, based on the University of California-Davis heat summation method. Much of the Santa Clara Valley area is classified as a Region II climate, based on 2700 degree-days. Even the nearby town of Gilroy is substantially warmer, at 2630 degree-days.

The soil is loamy, with some clay and gravel, and is generally well drained. The primary soil associations in the lower slopes are the Zamora-Pleasanton-San Ysidro loams. The soil associations in the upland—foothill areas are the Azule-Altamont-Los Gatos-Gaviota complexes. By contrast, the soil of the Santa Clara Valley, the approvel viticultural area within which this proposed area is located, is composed primarily of the Yolo and Zamora-Arbuckle-Pleasanton Associations.

Proposed Boundary

The northern, eastern and southern bondaries of the proposed San Ysidro District viticultural area consist primarily of streams and ridges reaching a maximum of 600 feet above sea level. The higher areas of the Diablo Range to the north and east of the boundary are not clutivated. The petitioner presented evidence that Highway 152, used as a western boundary, had been an Indian trail and a pioneer wagon road. The petitioner stated that the historical tendency of travellers to follow this route derives from the fact that it represents "a natural boundary between drier, upland foothill, and lower, poorly drained valley bottom land. . . ." The boundary of the proposed San Ysidro District viticultural area may be found on four United States Geological Survey maps with a scale of 1:24,000. The boundary is described in proposed § 9.130.

Executive Order 122912

It has been determined that this document is not a major regulation as defined in E.O. 12291 because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have sufficient adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effets on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511. 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Majorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in subpart C is amended to add the title of § 9.130 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.130 San Ysidro District.

* * * * *

Par. 3. Subpart C is amended by adding § 9.130 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.130 San Ysidro District.

(a) *Name.* The name of the viticultural area described in this section is "San Ysidro District."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the San Ysidro District viticultural area are four U.S.G.S. Quadrangle (7.5 minute series) maps. They are titled:

(1) Gilroy, Calif., 1955 (photorevised 1981);

(2) Chittenden, Calif., 1955 (photorevised 1980);

(3) San Felipe, Calif., 1955 (photorevised 1971);

(4) Gilroy Hot Springs, Calif., 1955 (photorevised 1971, photoinspected 1978.)

(c) *Boundary.* The San Ysidro District viticultural area is located in a portion of Santa Clara County in the State of California. The boundary is as follows:

(1) The beginning point is the intersection of California State Highway 152 and Ferguson Road with an unnamed wash, or intermittent stream, on the Gilroy, Calif., U.S.G.S. map;

(2) From the beginning point, the boundary follows the wash northeast as it runs co-incident with the old Grant boundary for approximately 3,800 feet;

(3) The boundary then follows the wash when it diverges from the old Grant boundary and continues approximately 2,300 feet in a northeasterly direction, crosses and recrosses Crews Road, then follows the wash southeast until the wash turns northeast in section 35, T.10S., R.4E., on the Gilroy Hot Springs, Calif., map;

(4) The boundary then diverges from the wash, continuing in a straight line in a southeasterly direction, across an unimproved road, until it intersects with the 600 foot contour line;

(5) The boundary then proceeds in a straight line at about the 600 foot elevation in a southeasterly direction until it meets the minor northerly drainage of the San Ysidro Creek;

(6) The boundary then follows the minor northerly drainage of San Ysidro Creek southeast for approximately 2,000 feet to the seasonal pond adjacent to Canada Road;

(7) From the seasonal pond, the boundary follows the southerly drainage of San Ysidro Creek for about 1,300 feet until it reaches the southwest corner of section 36, T.10S., R.4E.;

(8) The boundary then continues in a straight line in a southerly direction across Canada Road for approximately 900 feet until it intersects with the 600 foot contour line;

(9) The boundary follows the 600 foot contour line for approximately 6,000 feet in a generally southeasterly direction, diverges from the contour line and continues southeast another 1,200 feet until it meets an unimproved road near the north end of a seasonal pond on the San Felipe, Calif., U.S.G.S. map;

(10) The boundary follows the unimproved road to Bench Mark 160 at Highway 152.

(11) The boundary then follows Highway 152 in a northwesterly direction across the northeast corner of the Chittenden, Calif., U.S.G.S. map, and back to the beginning point at the junction of Ferguson Road and Highway 152.

Approved: June 22, 1990.

Daniel R. Black,

Acting Director.

[FR Doc. 90-15349 Filed 7-3-90; 8:45 am]

BILLING CODE 4810-31-M

---

27 CFR Part 9

[Notice No. 704]

RIN 1512-AA07

The Rogue Valley Viticultural Area (89F-458P); Proposed Establishment

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in the state of Oregon, to be known as "Rogue Valley". This proposal is the result of a petition from Mr. David R. Beaudry, a grape grower in the Jackson County area of southwest Oregon. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make their wines were grown and enables consumers to better identify wines they purchase.

DATES: Written comments must be received by August 20, 1990.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attn: Notice No. 704). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4412, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas.

Secion 4.25(a)(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25(a)(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. David R. Beaudry, a grape grower in Jackson County, Oregon, proposing an area in the Oregon counties of Jackson and Josephine as a viticultural area to be known as "Rogue Valley". This proposed viticultural area is located in southwest Oregon. There are seven wineries and 49 vineyards located within the Rogue Valley area, with approximately 400 acres of wine grapes. The petition provides the following information as evidence that the proposed area meets the regulatory requirements discussed above.

General Information

The beginning of viticulture in the Rogue Valley can be traced to Peter Britt, who secured cuttings from the mission grapevines of California and by 1858 was making the first wine in the Oregon Territory. He eventually experimented with more than 200

varieties of grapes, ranging for advice as far as the German Wine Growers Association on the Rhine. By 1880 his 15-acre vineyard was producing up to 3,000 gallons a year. Records show that he made a very popular claret, along with muscatel, schiller, zinfandel and port. (Photographer of a Frontier, the Photographs of Peter Britt by Alan Clark Miller). Mr. Miller reports that Britt's vineyard was located near Jacksonville west of Medford. The winery operation was called Valley View Vineyards. Today the name Valley View Vineyards is used by the Rogue Valley's first post-Prohibition winery, which is located near the town of Ruch south of Jacksonville.

Farmers at Ashland in southwestern Oregon grew vinifera table grapes and were shipping Flame Tokays to market before the Tokay industry developed at Lodi in California. In 1880, when the special national census of winegrowing was taken, Jackson County was listed as producing 15,000 gallons of wine. (The Wines of America by Leon D. Adams).

In 1884, A.G. Walling published his History of Southern Oregon, in which he refers to sixty or seventy acres of vineyards, located mainly near Jacksonville, which produced several thousand gallons of wine annually. The Rogue River Courier newspaper, in 1905, reported the visit of Mr. A.H. Carson, the largest grape grower in Oregon, to Grants Pass. The newspaper reported that Mr. Carson's 31 acres of vineyards produced Tokay, Emperor and Black Ferrerra grapes. His vineyard was located on the Applegate River in the Missouri Flat district of Josephine County.

Viticultural Area Name

The name "Rogue Valley" is the name used in both academic and consumer-oriented wine and viticultural books to refer to the sections of Jackson and Josephine Counties where grapes are grown. The Wines of America by Leon Adams, The History of Southern Oregon by A.G. Walling, and Touring the Wine Country of Oregon by Ronald and Glenda Holden all make considerable mention of viticulture in the Rogue Valley. The Rogue Valley in 1976 became one of three appellations or origin which were approved for use on Oregon wines by the Oregon Liquor Control Commission. Locally in southwestern Oregon, the names "Rogue Valley" and "Rogue River Valley" are used synonymously to describe the lands drained by the Rouge River and its many tributaries. These lands are entirely within southwestern Oregon and make up portions of Jackson, Josephine and northern Curry Counties. The proposed viticultural area has been narrowed, however, to include only portions of Jackson and Josephine Counties and to exclude Curry County altogether. The basis for this limitation is the philosophy that the Rogue Valley viticultural area should include only those areas which have a current or past history of winegrape production. The principal cities within the Rogue Valley of Oregon are Ashland, Medford, and Grants Pass. The name "Rogue Valley" is frequently used in the names of commercial, governmental, and charitable organizations in the region.

At the national level, the name "Rogue Valley" is widely identified with the sport fishing industry on the Rogue River and with the pear orchards and pear packing companies of the region. The Rogue Valley has been identified as the third largest pear growing area in the nation by Clifford B. Cordy in his History of the Rogue Valley Fruit Industry.

Historical/Current Evidence of Boundaries

According to the petitioner, all the past and present commercial winegrowing areas of the region are located on the low elevation land along the watercourses of the Rogue River and its tributaries. Today, viable commercial vineyards are found at or near the communities of Ashland, Talent, Medford, White City, Eagle Point, Central Point, Ruch, Rogue River, Grants Pass, Applegate, Murphy, Selma, Cave Junction, and Holland, all of which are located along the Rogue River and its tributaries.

The Rogue Valley is completely surrounded by three mountain ranges. At the northern and western boundaries of the Rogue Valley, the Siskiyou and Oregon Coast Ranges form a barrier. These ranges also form an effective dividing line geographically from the Umpqua Valley viticultural area to the north in Douglas County. To the south, the Siskiyou Mountains separate the Rogue Valley from the Klamath River Valley in northern California. In the east, the Cascade Mountains serve as a partition between the Rogue Valley and the Klamath River Basin in Klamath County, Oregon.

The main tributaries of the Rogue River are: (1) Bear Creek which drains Medford, Ashland, and surrounding smaller communities, (2) the Applegate River which drains the south central part of the Valley, Jacksonville and the south Grants Pass area, (3) Evans Creek which drains Rogue River City, Wimer and the north central part of the Valley, and (4) the Illinois River which drains Holland, Cave Junction, Selma and the southwestern portion of the Valley, and which merges with the Rogue River at the town of Agness in Curry County. There are also many more small creeks and water systems which feed the Rogue River and its main tributaries.

Geographical Features

The Rogue Valley is unique in Oregon viticulture in two respects: (1) The climate is warmer than anywhere else in the State and (2) the elevation is higher. For instance, the only zone II grape-growing area in Oregon listed in General Viticulture by Winkler, Cook, Kliewer and Lider is Grants Pass in the Rogue Valley. Here the "Heat summation" is listed at 2680 degrees. This compares with the zone I figures of 2220 degrees for Roseburg, Oregon in the Umpqua Valley viticultural area and 2030 degrees for Salem, Oregon in the Williamette Valley viticultural area. The heat summation for Medford in the Rogue Valley is 2650 degree days. (Compiled from Climatography of the United States No. 84, Daily Normals of Temperature, Heating and Cooling Degree Days and Precipitation, N.O.A.A., 1983).

The greater warmth of the Rogue Valley allows certain grape varieties to achieve a level of success not found in the surrounding areas of western Oregon. In western Oregon, except for the Rogue Valley, the grape variety Merlot fails to set fruit reliably. Wines made from Rogue Valley Cabernet Sauvignon grapes are widely regarded as among the finest in Oregon. Ted Jordan Meredith, in his Northwest Wine Companion, states that Oregon's Williamette Valley is too cool for the best Cabernet Sauvignon, while further south, the Umpqua Valley and particularly the Rogue Valley, are capable of producing fine Cabernets. Mr. Meredith describes the Applegate Valley (within the proposed Rogue Valley viticultural area) as one of the warmest grape-growing areas in western Oregon, and the Illinois Valley (also within the Rogue Valley viticultural area) as being only slightly cooler than the nearby Applegate Valley. Mr. Meredith also states that warmer climate grapes like Cabernet Sauvignon and Semillon are well-suited to the Illinois Valley.

The other great geological difference between the Rogue Valley and surrounding areas is the high elevation of the land. The highest elevation vineyards in Oregon are all located in the Rogue Valley. The highest elevation vineyard in the Umpqua Valley viticultural area is lower in elevation than the lowest elevation Rogue Valley vineyard. Hillcrest Vineyard in the

Umpqua Valley is at 850 feet above sea level, while the Rogue Valley's lowest elevation vineyard is Rancho Vista Vineyard in Grants Pass at 1,100 feet. The remaining Rogue Valley vineyards are at even higher elevations. Due to the higher elevations, the Rogue Valley experiences large drops in evening temperatures. The average range between high and low daily temperatures in July in the Medford area is 37 degrees Fahrenheit, which is higher than any other location in Oregon. The average Medford July high is more than 86 degrees F. and the average nighttime low is 50 degrees F. (Atlas of Oregon, University of Oregon). The low evening temperatures have a beneficial effect on wine grapes. The retention of grape acids is much better when the fruit is ripened in a cool environment. Also, cool nights aid significantly in the coloration of ripening grapes. These characteristics of high elevation viticulture lead to improved wine quality. (General viticulture, Winkler, Cook, Kliewer and Lider). The average length of the growing season in the Rogue Valley is 180 days, and the average annual rainfall is 28 inches. The Rogue River drainage area (Rogue Valley) is characterized by steep, rugged mountains and narrow river valleys. The Klamath, Siskiyou, and western Cascades are the principal mountain ranges in this area. These mountains are composed of volcanic, altered volcanic and sedimentary, and intrusive igneous rocks. The valleys consist of flood plains, terraces, alluvial fans, and hills. The topography, parent material, and climate combine and interact to create soil properties unique to the area. Six of the ten soil orders (Vertisols, Ultisols, Mollisols, Alfisols, Inceptisols, and Entisols) occurring in the world are in the Rogue Valley area. (Rogue Borine, Area Soil Scientist, U.S.D.A.). The agricultural soils of Jackson and Josephine Counties are located in the 900 to 2000 foot elevation range. In Jackson County, soil pH ranges from 5.8 to about 6.6. Josephine County soils have a pH range of 5.7 to about 6.4. Jackson County has some soil series that are of clay texture, principally Carney, Coker, and Phoenix clays. These clay series are not found in Josephine County. There are at least ten soils series that are common to both counties. They are Barron, Camas, Central Point, Cove, Debenger, Evans, Kerby, Newberg, Pollard and Ruch. The soils of Jackson and Josephine Counties are much more closely related to each other than to those of the Willamette Valley, coastal, or eastern Oregon areas. Soils of the Willamette Valley formed under at least 40 inches of annual precipitation and they are considerably more acid than those of the Rogue Valley, having pH ranges of 5.4 to 6.0. (John A. Yunger, Professor of Agronomy, Oregon State University, Medford, Oregon).

Proposed Boundaries

The boundaries of the proposed Rogue Valley viticultural area may be found on one U.S.G.S. map, "Medford," 1:250,000 scale (1955, revised 1976). The proposed Rogue Valley viticultural area is located entirely within Jackson and Josephine Counties in southwestern Oregon. The specific description of the boundaries of the proposed viticultural area is found in the proposed regulations which immediately follow the preamble in this notice of proposed rulemaking.

Executive Order 12291

It has been determined that this proposed regulation is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paper Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments concerning this proposed viticultural area from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The Table of Sections in subpart C is amended to add the title of § 9.132 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.132 Rogue Valley.

Par. 3. Subpart C is amended by adding § 9.132 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.132 Rogue Valley.

(a) *Name.* The name of the viticultural area described in this section is "Rogue Valley."

(b) *Approved maps.* The appropriate map for determining the boundaries of the Rogue Valley viticultural area is one U.S.G.S. map. It is titled "Medford." scale 1:250.000 (1955, revised 1976).

(c) *Boundaries.* The Rogue Valley viticultural area is located entirely within Jackson and Josephine Counties in southern Oregon. The boundaries are as follows:

(1) Beginning at the point of intersection of Interstate 5 and the Josephine County/Douglas County line approximately 20 miles north of Grants Pass, the boundary proceeds southerly and southwesterly along U.S. Interstate 5 to and including the town of Wolf Creek;

(2) Then westerly and southerly out of the town of Wolf Creek along the Southern Pacific Railway Line to and including the town of Hugo;

(3) Then southwesterly along the secondary, hard surface road known as Hugo Road to the point where the Hugo Road crosses Jumpoff Joe Creek;

(4) Then westerly and down stream along Jumpoff Joe Creek to the intersection of Jumpoff Joe Creek and the Rogue River;

(5) Then northwesterly and down stream along the Rogue River to the first point where the Wild and Scenic Rogue River designated area touches the easterly boundary of the Siskiyou National Forest just south of Galice;

(6) Then in a generally southwesterly direction (with many diversions) along the easterly border of the Siskiyou National Forest to the 42 degree 0 minute latitude line;

(7) Then easterly along the 42 degree 0 minute latitude line to the point where the Siskiyou National Forest again crosses into Oregon approximately 1 mile east of U.S. Highway 199;

(8) Then in a generally northeasterly direction and then a southeasterly direction (with many diversions) along the northern boundary of the Siskiyou National Forest to the point where the Siskiyou National Forest touches the Rogue River National Forest at Big Sugarloaf Peak;

(9) Then in a generally easterly direction (with many diversions) along the northern border of the Rogue River National Forest to the point where the Rogue River National Forest intersects with Slide Creek approximately 6 miles southeast of Ashland;

(10) Then southeasterly and northeasterly along Slide Creek to the point where it intersects State Highway 273;

(11) Then northwesterly along State Highway 273 to the point where it intersects State Highway 66;

(12) Then in an easterly direction approximately 5 miles along State Highway 66 to the east line of Township 39 South, Range 2 East (T39S, R2E);

(13) Then following the east line of T39S, R2E, in a northerly direction to the northeast corner of T39S, R2E;

(14) Then westerly approximately 5 miles along the north line of T39S, R2E, to the 2,600 foot contour line;

(15) Then in a northerly direction following the 2,600 foot contour line across Walker Creek and then in a southwesterly direction to the point where the 2,600 foot contour line touches the east line of T38S, R1E;

(16) Then northerly along the east line of T38S, R1E, to the northeast corner of T38S, R1E;

(17) Then westerly along the north line of T38S, R1E, to the northwest corner of T38S, R1E;

(18) Then northerly along the west line of T37S, R1E, to the northwest corner of T37S, R1E;

(19) Then easterly along the north lines of T37S, R1E, and T37S, R2E, to the southeast corner of T36S, R2E;

(20) Then northerly along the east line of T36S, R2E, to the northeast corner of T36S, R2E;

(21) Then westerly along the north line of T36S, R2E, to the northwest corner of T36S, R2E;

(22) Then northerly along the east line of T35S, R1E, to the northeast corner of T35S, R1E;

(23) Then westerly along the north line of T35S, R1E, to the northwest corner of T35S, R1E;

(24) Then northerly along the east line of T34S, R1W, to the northeast corner of T34S, R1W;

(25) Then westerly along the north lines of T34S, R1E, T34S, R2W, T34S, R3W, T34S, R4W, and T34S, R5W, to the northwest corner of T34S, R5W;

(26) Then northerly along the west line of T33S, R5W, to the Josephine County/Douglas County line;

(27) Then westerly along the Josephine County/Douglas County line to U.S. Interstate 5, the point of beginning.

Approved: June 22, 1990.

Daniel R. Black,

Acting Director.

[FR Doc. 90-15350 Filed 7-3-90; 8:45 am]

BILLING CODE 4810-131-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3805-8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve rule 10 CSR 10-5.330 as a revision to the Air Pollution Control State Implementation Plan (SIP) of the state of Missouri. This rule, required by the Clean Air Act, controls emissions of volatile organic compounds (VOC) from industrial surface coating operations in the St. Louis area. VOCs react in the atmosphere to form ozone. A reduction in VOC emissions is necessary for the St. Louis area to meet the National Ambient Air Quality Standards for ozone. EPA's approval will make the rule requirements federally enforceable. EPA is also proposing to approve amendments to rule 10 CSR 10-6.020, which defines terminology used in the state's air pollution control rules.

DATES: Comments must be received by August 6, 1990.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state-submitted information and the EPA-prepared technical support document are available for public review at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at Commercial/FTS: (913) 551-7020 or FTS 2000: 276-7020.

SUPPLEMENTARY INFORMATION: Part D of the CAA, as amended, requires that a state revise its SIP for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). On May 26, 1988, EPA informed the Governor of Missouri that the SIP for the St. Louis area was substantially inadequate to attain the NAAQS for ozone and carbon monoxide.

In response to the SIP call, the state submitted a SIP revision on January 11, 1990. The state submittal constituted a revision of the St. Louis industrial surface coating rule, 10 CSR 10-5.330; the existing rule was rescinded and a

new rule of the same number and title was adopted. The submittal also includes amendments to the definitions rule, 10 CSR 10–6.020. The state's rule actions were adopted by the Missouri Air Conservation Commission after proper notice and public hearing and became effective on November 26, 1989.

The state submitted these rule actions in compliance with Section 172(b)(2) of the Clean Air Act, which requires SIPs to provide for the implementation of all reasonably available control measures as expeditiously as practicable. The state submittal is consistent with EPA policy as outlined in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**," dated May 25, 1988. For a detailed discussion of the state submittal, the reader is directed to the aforementioned EPA technical support document.

Review of 10 CSR 10–5.330

This new rule is applicable to sources with actual emissions of greater than 2.5 tons per calendar year. Once a source becomes subject to this rule, it remains subject even if its actual emissions drop below the applicability level.

The state established a new emission limit applicable to automobile assembly plants. The new limit is expressed in terms of coating solids applied, and applies to automobile and light-duty truck topcoat and spray prime operations. The state has demonstrated that the new limit (15.1 pounds of VOC per gallon of solids applied) is equivalent to the previously existing limits (pounds of VOC per gallon of coating) in subsection (4)(B) of the rule. The new solids applied limit allows improvements in transfer efficiency (TE) to be used in compliance demonstrations. TE is the ratio of coating solids applied to a surface to the total amount of coating solids used in the process. The rule references EPA's "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," dated December 1986 (EPA–450/3–88–018), for determining compliance with the new emission limit.

Compliance determination procedures have been made more specific for the existing emission limits in subsection (4)(B). Compliance with these emission limits can be demonstrated: (1) On a daily volume-weighted average of pounds of VOC per gallon of coating; (2) on a composite daily weighted average of pounds of VOC per gallon of coating solids; and (3) on the basis of pounds of VOC per gallon of coating solids applied. Each of the three preceding methods applies on a per coating line basis.

In order for sources to demonstrate compliance on a solids applied basis (subsection (5)(B)3), the director of the Missouri Air Pollution Control Program must first determine an appropriate TE value. Prior to such a determination, the owner/operator must demonstrate to the satisfaction of the director that an adequate, fully replicable TE test method exists for the source operation. Upon approval of the TE demonstration, the director will develop an emission limit equivalent to the applicable emission limit in subsection (4)(B). The state has agreed to submit any director-determined equivalent emission limits to EPA for approval as individual SIP revisions. In the absence of EPA approval, the enforceable requirements of the SIP are the emission limits stated in subsection (4)(B) of the rule with compliance as determined by subsection (5)(B)1 or (5)(B)2.

The previous version of the rule allowed for alternative compliance plans (ACP) with respect to the emission limits in section (4)(B), if the ACP was approved by the director. EPA has maintained that any such ACPs must be submitted to and approved by EPA as individual SIP revisions. Source owners/operators operating under existing ACPs must submit documentation that their emission control methods represent compliance with the rule. If the director determines that the documentation represents compliance, the director shall initiate rulemaking action to make such controls enforceable. If documentation is not submitted or if the director determines that the documentation does not represent compliance, source owners/operators must comply with the emission limits stated in subsection (4)(B) of the rule with compliance as determined by subsection (5)(B)1 and (5)(B)2. In either case, all source owners/operators operating under existing ACPs must demonstrate, by December 1, 1990, that they are currently in compliance with the rule. The state has agreed to submit any rule actions, pursuant to existing ACPs, to EPA for approval as individual SIP revisions. In the absence of EPA approval, the enforceable requirements of the SIP are the emission limits stated in subsection (4)(B) of the rule with compliance as determined by subsection (5)(B)1 or (5)(B)2.

Because none of the existing emission limits in subsection (4)(B) of the rule were changed, EPA has not allowed any additional time for sources to come into compliance. The changes in the new rule involve the manner in which compliance is to be demonstrated. Thus, the state is justified in allowing the additional time for source owners/operators, subject to existing ACPs, to demonstrate compliance. The additional time to demonstrate compliance does not excuse violations of existing emission limits for ACPs which were in effect prior to the effective date of the new rule.

Review of 10 CSR 10–6.020

The state's definition rule was amended to add definitions of many terms used in the surface coating rule. Also, the definition of "volatile organic compound" was revised to require that source owners/operators exclude nonreactive compounds when making compliance determinations. EPA ACTION: EPA proposes to approve the state's January 11, 1990, submittal as a revision to the Missouri SIP. EPA's decision to approve or disapprove this SIP revision will be based on comments received and on a determination of whether the revision meets the requirements of sections 110 and 172 of the Clean Air Act and 40 CFR part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: June 25, 1990.

Morris Kay,

Regional Administrator.

40 CFR part 52, subpart AA, is proposed to be amended as follows:

PART 52—[AMENDED]

Subpart AA—Missouri

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding paragraph (c)(72) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(72) The Missouri Department of Natural Resources submitted new rule 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, and amendments to rule 10 CSR 10–6.020, Definitions, on January 11, 1990.

(i) Incorporation by reference

(A) New rule 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, effective November 26, 1989.

(B) Rescinded rule 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, effective November 26, 1989.

(C) Revisions to rule 10 CSR 10–6.020, Definitions, effective November 26, 1989.

3. Section 52.1323 is amended by adding paragraph (e) to read as follows:

§ 52.1323 Approval status.

* * * * *

(e) The Administrator approves Rule 10 CSR 10–5.330 as identified under § 52.1320, paragraph (c)(72), under the following terms, to which the State of Missouri has agreed: Subsections (5)(B)3 and (7)(B) of the rule contain provisions whereby the director of the Missouri Air Pollution Control Program has discretion to establish compliance determination procedures and equivalent alternative emission limits for individual sources. Any such director discretion determinations under this rule must be submitted to EPA for approval as individual SIP revisions. In the absence of EPA approval, the enforceable requirements of the SIP are the applicable emission limit(s) in subsection (4)(B) and the compliance determination provisions stated in subsection (5)(B)1 or (5)(B)2.

[FR Doc. 90–15600 Filed 7–3–90; 8:45 am]

BILLING CODE 6560–50–M

[40 CFR Part 52]

[FRL 3805–5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published April 3, 1990, (55 FR 12387) is being extended an additional 30 days. The April 3, 1990, notice proposed to approve a revision to the Wisconsin State Implementation Plan, which would amend Wisconsin's Sulfur Dioxide (SO_2) Plan for the Green Bay and De Pere area, by adding Natural Resources (NR) 418.05(1), Emission Limits; NR 418.05(2), Annual Facility Limits; NR 418.05(3), Compliance Dates; and NR 418.05(4), Compliance Plans.

DATES: Comments are now due on or before July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

Dated: June 20, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90–15455 Filed 7–3–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 148 and 268

[FRL–3805–7]

Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant case-by-case extensions.

SUMMARY: EPA is proposing to grant the requests from American Cyanamid Company in Westwego, Louisiana, Celanese Engineering Resins, Inc. in Bishop, Texas and E.I. du Pont de Nemours & Co., Inc. in Orange, Texas for a three month extension of the August 8, 1990, effective date of the hazardous waste injection restrictions applicable to specific injected wastes. The following waste codes reflect the wastes currently being injected at each of these facilities. These case-by-case extensions are only for the waste codes impacted by the August 8, 1990, ban date (California listed wastes, solvents less than one (1) percent solvent constituents and First Third wastes).

American Cyanamid Company Waste Codes:

D001, D002, D003, F001, K011, K013, P063, P069, U002, U007, U008, U009, U092, U154, U162, U220.

Celanese Engineering Resins, Inc. Waste Codes:

U001, U002, U019, U031, U056, U072, U080, U112, U121, U122, U123, U133, U134, U140, U154, U159, U161, U188, U226, F002, F003, F005, F039, D001, D002, D018.

E.I. du Pont de Nemours & Co., Inc. Waste Codes:

D002, D003, D005, D018, D021, D007, D023, D024, D025, D026, D027, D008, D009, P063, P074, P106, P120, U037, U052, U056, U057, U213, U154, U188.

This action responds to petitions submitted under 40 CFR 148.4 according to procedures set out in 40 CFR 268.5, which allow any person to request that the Administrator grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that the petitioner has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste. If this proposed action is finalized, American Cyanamid, Celanese—Biship and Du Pont—Orange can continue to inject the above identified wastes into the Class I hazardous waste injection wells located at the Westwego, Louisiana, Bishop, Texas and Orange, Texas facilities, respectively, until November 8, 1990, but not later than this date without being subject to the prohibitions applicable to such wastes.

DATES: Comments on this notice must be received on or before August 2, 1990.

ADDRESSES: The public must send an original and two copies of their comments to: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733. The docket for this action is located at the EPA Region 6 library (at the above address) which is open during normal business hours, 8 a.m. through 4 p.m., Monday through Friday. The public can review all docket materials by visiting the library.

FOR FURTHER INFORMATION CONTACT: For information contact Oscar Cabra, Jr., Chief Water Supply Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202–2733 or telephone (214) 655–7150, FTS 255–7150.

SUPPLEMENTARY INFORMATION:

I. Background

A. Congressional Mandate

On November 8, 1984, Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA). HSWA imposes additional responsibilities on persons managing hazardous wastes. Sections 3004 (d) through (g) prohibit the land disposal of indicated hazardous wastes by specified dates in order to protect human health and the environment for as long as the wastes remain hazardous. On July 26, 1988, EPA promulgated a final rule (53 FR 28118, effective August 8, 1988), that established an effective date of August 8, 1990, for injected spent F001–F005 solvent wastes containing less than 1 percent solvent constituents. An August 8, 1990, effective date was established for specified California listed wastes that are deep well injected. See 53 FR 30908, effective August 8, 1988.

Section 3004(m) requires the Agency to set levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. Wastes that meet treatment standards established by EPA are no longer prohibited and may be land disposed.

Sections 3004 (d), (e), (f), and (g) also allow the applicant to demonstrate to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The no migration petition process has been established by the Agency for injected wastes under 40 CFR part 148, subpart C. See 53 FR 28118, July 26, 1988.

Congress recognized that adequate alternative treatment, recovery, or disposal capacity, any of which is protective of human health and the environment, may not be available by the applicable statutory effective dates and authorized EPA to grant a variance (based on the earliest dates that such capacity will be available) from the effective date(s) which would otherwise apply to specific hazardous wastes (RCRA 3004 (h)(2) and (h)(3)). In addition, under section 3004(h)(3), the Agency can grant case-by-case extensions of the statutory deadlines for up to one year beyond the applicable deadlines. These extensions are renewable once for up to one additional year.

On November 7, 1986, EPA published a final rule (51 FR 40572) establishing the regulatory framework to implement the land disposal restrictions program including procedures for submitting case-by-case extensions under § 268.5. On July 26, 1988, EPA published a final rule (53 FR 28118) establishing restrictions and requirements for Class I hazardous waste injection wells, including the framework for the no migration petition process and allowing case-by-case extensions under § 148.4 following § 268.5 procedures.

B. Demonstration Requirements

1. Summary of Requirements

Case-by-case extension applications must satisfy the requirements outlined in 40 CFR 268.5. These requirements include those specified in RCRA section 3004(h)(3): The applicant must have entered into a binding contractual commitment to construct or otherwise provide alternative capacity (40 CFR 268.5(a)(2)), but due to circumstances beyond his control, this alternative capacity cannot reasonably be made available by the applicable effective date (40 CFR 268.5(a)(3)).

In addition, EPA has established by regulation the following requirements: The applicant must demonstrate that he has made a good faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste (40 CFR 268.5(a)(1)). Again, the applicant must demonstrate why this nationwide capacity cannot reasonably be made available by the effective date.

The applicant must also show that the alterative treatment, recovery, or disposal capacity will be adequate for all of his waste (40 CFR 268.5(a)(4)). He must submit a schedule showing the progress that will be made toward providing adequate alternative capacity by including dates for obtaining required operating and construction permits and dates for completing key phases of the project (40 CFR 268.5(a)(5)), and must also show that he has arranged for sufficient capacity to manage the entire quantity of waste which is the subject of his petition during the requested extension period, and must document in his application the location of all sites at which the waste will be managed (40 CFR 268.5(a)(6)).

If the waste would be disposed of in a surface impoundment or landfill during the period of the extension, the unit must meet the minimum technological requirements for these units (40 CFR 268.5(a)(7)).

After an applicant has been granted a case-by-case extension, he is required to keep EPA informed of the progress being made towards obtaining adequate alternative treatment, recovery, or disposal capacity. Any change in the demonstrations made in the petition must be immediately reported to the Agency (40 CFR 268.5(f)). Also, at specified intervals, he must submit progress reports which describe the progress being made towards obtaining alternative capacity, identify any delay or possible delay in developing capacity, and describe the mitigating actions being taken (40 CFR 268.5(g)).

2. Commitment to Provide Protective Disposal Capacity

EPA believes that the applicants for today's proposed case-by-case extensions have shown the necessary commitment to provide protective disposal capacity within the meaning of RCRA section 3004(h)(3) and 40 CFR 268.5(a)(1). These provisions require an applicant to make two showings: (1) That the proposed "disposal capacity" is "protective of human health and the environment", and (2) that the applicant has made "a binding contractual commitment to construct or otherwise provide" such capacity. The Agency construes the first phrase to mean a no migration unit. No migration findings in 40 CFR parts 148 or 268 provide for a variance to the land disposal prohibitions and, accordingly, are functionally equivalent to compliance with treatment standards under part 268. Moreover, the statute defines protective disposal capacity for purposes of RCRA sections 3004 (d), (e), and (g) as no migration units. EPA also considers no migration capacity as protective disposal capacity for purposes of RCRA section 3004(h)(2).

With respect to showing a "binding contractual commitment", where applicants have already constructed (and, indeed, are operating) the disposal units at issue, EPA interprets the regulatory language to require objective indicia of applicant's commitment to provide this capacity. EPA's approach is in line with similar practical interpretations of regulatory language. For example, the Agency has construed the term "commenced construction" to include facilities which have completed construction but did not commence operations. See 46 FR 2344, 2346 (January 9, 1981).

EPA does not believe that the simple filing of a no migration petition provides sufficient indication that the applicant will provide protective disposal capacity. Where an applicant seeks to provide treatment capacity, EPA can rely on design criteria as a basis to

predict that the treatment capacity will provide for treatment in compliance with 40 CFR part 268. Because the Agency was less certain that no migration findings would be forthcoming in a given circumstance, EPA had previously stated that a no migration petition and the Agency's failure to process such petitions before an effective date cannot itself provide a basis for a case-by-case extension. See 53 FR 28124 (July 26, 1988). EPA has reevaluated this interpretation and believes that where the Agency has concluded that a no migration petition is sufficient to propose a no migration finding, this proposed finding is legitimate indicia that the applicant is, in good faith, committed to providing protective disposal capacity for purposes of 40 CR 268.5. See 55 FR 22520. If EPA were to require an actual no migration finding as a condition for a case-by-case extension, such a reading would effectively read the phrase "protective disposal capacity" out of RCRA 3004(h)(3) in violation of all standard tenets of statutory construction, which require that all terms be given effect when possible. The term would be read out of the statute because once the no migration petition was granted, there is no need to seek a case-by-case extension as wastes could be disposed directly in the unit. In addition, case-by-case extensions necessarily involve pedictions about future capacity. For example, such predictive findings specifically include the need for permits that may not yet be issued. See 40 CFR 268.5(a)(5).

Today's proposed case-by-case extensions are based on objective indicia of the applicants' commitment to provide disposal capacity. First, the petitioners' applications are based on already constructed wells. Thus, these petitioners' commitment is more definitive than petitions based solely on contracts to construct such capacity. See RCRA section 3004(h)(3). Second, the injection wells have all been permitted under both RCRA and SDWA standards, thus further demonstrating a commitment to provide this capacity. The applicants have demonstrated that only a no migration finding prevents the units from being available as protective disposal capacity. Third, today's applicants have made substantial contractual commitments in preparing the no migration petitions. Finally, EPA has a good basis for believing that this capacity will, in fact, be provided in a short period of time. Permitted hazardous waste injection wells, as a class of units, have a good record for obtaining no migration findings. EPA has already issued 15 no migration findings. EPA has evaluated the no migration petitions for facilities in this proposal and believes that they are promising. EPA has proposed approval for no migration petitions for one of these facilities and is near proposal for the others. If EPA does not formally propose a no migration finding, then it will not proceed to finalize a case-by-case extension for the well(s) in question. This iondicia serves to prevent the mere filing of a no migration petition itself from providing the basis for a case-by-case extension.

3. Requirement to Seek Other Alternative Capacity

The applicant's commitment to provide protective disposal capacity is not the sole basis for EPA granting a case-by-case extension. Under 40 CFR 268.5(a)(1), applicants must also make a good faith effort to seek other protective treatment, recovery, or disposal where feasible during the period that his proposed alternative capacity is not available. Such good faith efforts under § 268.5(a)(1) can be evaluated considering both the expected time period that the alternative capacity will take to become available and technical difficulties that the operator will face in bringing his waste to alternative capacity in consideration of factors in § 268.5(a)(3).

There is limited other capacity under (a)(1) to eventually handle the waste from the well operators in this proposal. However, due to logistic problems of retooling, repiping, and transportation of the large volume of waste at issue, this other capacity is not reasonably available during the short period of time EPA anticipates is necessary to process final no migration approvals or denials for these wells.

4. Reasons Alternative Capacity Cannot Reasonably be Made Available by the Applicable Effective Date

Today's applicants have, in good faith, pursued the no migration process with reasonable belief that the Agency would provide a no migration finding by the August 8, 1990, effective date. The operators submitted their no migration petitions in a timely manner, and have responded appropriately to Agency requests for additional information in order to make a determination on the petition.

The timing of the actual finding is beyond each applicant's control. This no migration finding is a precondition to the provision of the alternative disposal capacity. EPA has reviewed 65 no migration petitions is an intensive, time-consuming process. The order in which decisions are made is primarily a function of Agency resources and priorities. This no migration review process is the reason that the applicant's wells may not be available as no migration units by the effective prohibition dates.

Today's applicants have documented several logistic problems that make short-term capacity not reasonably available. The facilities in question involve production operations directly connected by piping, or otherwise rely on immediate disposal in on-site injection wells. In order to make the necessary adjustments, the facilities would need to temporarily shutdown, perform necessary retooling and repiping, and construct a transportation system to move the large volumes of waste at issue. The receiving facility would also need to make substantial adjustments to receive these large waste volumes. Also, there is not sufficient off-site capacity. These factors indicate that the other capacity is not reasonably available for short-term waste management. EPA has relied on similar criteria in providing nationwide variances under RCRA 3004(h)(2). See 55 FR 22520.

II. Petition(s)

A. Facility Summaries

American Cyanamid Company, Westwego, Louisiana, Celanese Engineering Resins, Inc., Bishop, Texas and E. I. du Pont de Nemours & Co., Inc., Orange, Texas have petitioned EPA to grant and extension of the effective date of the hazardous waste injection restrictions applicable to the following wastes: California listed wastes, solvents less than one (1) percent solvent constituents and First Third wastes.

EPA is proposing to grant and extension of the effective date of the applicable restrictions for three months from the hazardous waste injection restrictions effective date of August 8, 1990, for the above, referenced wastes from these facilities. American Cyanamid's, Celanese-Bishop's and Du Pont-Orange's request and supporting documentation are available in the public docket for this rulemaking. Interested persons are invited to submit comments or written data on this petition. All comments will be considered by EPA and addressed in a Federal Register notice stating the Agency's final decision to grant or deny the petition.

B. Description of Petitioning Facility

American Cyanamid Company is a chemical manufacturing company which operates five hazardous waste injection wells in Westwego, Louisiana.

Celanese Engineering Resins, Inc. is a chemical manufacturing company which operates three hazardous waste injection wells in Bishop, Texas.

E.I. du Pont de Nemours & Co. Inc. is a chemical manufacturing company which operates six hazardous waste injection wells in Orange, Texas.

C. Case-by-Case Extension Petition Demonstrations

American Cyanamid Company's application for an extension of the effective date includes the following demonstrations:

40 CFR 268.5(a)(1) American Cyanamid has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity, or to establish such capacity by the effective data of the applicable restrictions.

40 CFR 268.5(a)(2) American Cyanamid has entered into a binding contractual commitment to provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) American Cyanamid has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) American Cyanamid has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

40 CFR 268.5(a)(5) American Cyanamid has provided a detailed schedule for obtaining alternative capacity, including dates.

40 CFR 268.5(a)(6) American Cyanamid has arranged for adequate capacity to manage the waste during the extension period.

40 CFR 268.5(a)(7) No surface impoundments or landfills will be used by American Cyanamid to manage the waste during the extension period.

Celanese Engineering Resins, Inc.'s application for an extension of the effective date includes the following demonstrations:

40 CFR 268.5(a)(1) Celanese—Bishop has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity, or to establish such capacity by the effective data of the applicable restrictions.

40 CFR 268.5(a)(2) Celanese—Bishop has entered into a binding contractual commitment to provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) Celanese—Bishop has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) Celanese—Bishop has shown that there will be adequate alternative, treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

40 CFR 268.5(a)(5) Celanese—Bishop has provided a detailed schedule for obtaining alternative capacity, including dates.

40 CFR 268.5(a)(6) Celanese—Bishop has arranged for adequate capacity to manage the waste during the extension period.

40 CFR 268.5(a)(7) The surface impoundments or landfills used by Celanese—Bishop to manage the waste during the extension period will meet the requirements of 40 CFR 268.5(h)(2).

E.I. du Pont de Nemours & Co., Inc.'s application for an extension of the effective date must include the following demonstrations:

40 CFR 268.5(a)(1) Du Pont—Orange has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity, or to establish such capacity by the effective data of the application restrictions.

40 CFR 268.5(a)(2) Du Pont—Orange has entered into a binding contractual commitment to provide alternative treatment, provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) Du Pont—Orange has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) Du Pont—Orange has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

40 CFR 268.5(a)(5) Du Pont—Orange has provided a detailed schedule for obtaining alternative capacity, including dates.

40 CFR 268.5(a)(6) Du Pont—Orange has arranged for adequate capacity to manage the waste during the extension period.

40 CFR 268.5(a)(7) No surface impoundments or landfills will be used by Du Pont—Orange to manage the waste during the extension period.

III. EPA's Proposed Action

For the reasons discussed above, the Agency believes that American Cyanamid's, Celanese-Bishop's and Du Pont-Orange's demonstrations have satisfied all the requirements for a case-by-case extension of the August 8, 1990, effective date of the hazardous waste injection restrictions.

Therefore, EPA is proposing to grant an extension of the August 8, 1990, effective date of the restrictions on these wastes for American Cyanamid, Celanese-Bishop and Du Pont-Orange. If the extension is granted, these wastes, which would not be prohibited from land disposal, could be injected over a three month period, starting from the effective date of August 8, 1990, but not later than November 8, 1990. If during the time frame of this case-by-case extension, a final decisions of the applicant's no migration petition is make, then the case-by-case extension will expire.

If American Cyanamid, Celanese-Bishop and Du Pont-Orange obtain a case-by-case extension, they would have to submit a report two months after the date the extension is granted, addressing the status or any progress being made to obtain alternative disposal capacity. The Agency must be notified of any change in the conditions specified in the petition. The extension would remain in effect unless American Cyanamid, Celanese-Bishop and Du Pont-Orange fail to make a good faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, or if American Cyanamid, Celanese-Bishop and Du Pont-Orange violate any law or regulations implemented by EPA. (section 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924)).

Dated: June 28, 1990.

Myron O. Knudson,

Director, Water Management Division (6W), EPA Region 6.

[FR Doc. 90-15601 Filed 7-3-90; 8:45 am]

BILLING CODE 6050-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearing on Proposed Endangered Status for the Plant Potamogeton Clystocarpus (Little Aguja Creek Pondweed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held and the comment period reopened on the proposed rule to list *Potamogeton clystocarpus* (Litt1e Aguja Creek pondweed) as an endangered species. The hearing and the reopening of the comment period will allow all interested parties to submit oral or written comments on the proposal.

DATES: The public hearing will be held from 7 p.m. to 11 p.m. on July 19, 1990, in Fort Davis, Texas. The comment period for this proposal is reopened and now closes on August 6, 1990. Comments must be received by the closing date. Any comments that are received after the

closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the St. Joseph's Catholic Church Parish Hall, Fort Davis, Texas. Comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, at the above address, telephone (512) 888–3346, or FTS 529–3346.

SUPPLEMENTARY INFORMATION:

Background

Potamogeton clystocarpus is a member of the pondweed family and is endemic to a single intermittent stream in Little Aguja Canyon in the Davis Mountains of Texas. Potential habitat is limited to a few deep pools with sufficient light levels. *Potamogeton clystocarpus* is threatened throughout its range by large herbivore trampling and possible changes in water quality. A proposed rule to list this species as endangered was published in the Federal Register (55 FR 9741) on March 15, 1990.

Section 4(b)(5)(E) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On April 23, 1990, the service received a written request for a public hearing from Mr. Ben Love, President of the Davis Mountains Heritage Association.

The Service has scheduled this public hearing for July 19, 1990, from 7 p.m. to 11 p.m. in the St. Joseph's Catholic Church Parish Hall, Fort Davis, Texas. Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the service. The comment period on the proposed rule originally closed on May 14, 1990. The service is reopening the comment period until August 6, 1990. Written comments should be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service. P.O. Box 1306, Albuquerque, New Mexico 87103, telephone (505) 766–3972, or FTS 474–3972.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: June 28, 1990.

Pat A. Langley,

Acting Regional Director.

[FR Doc. 90–15493 Filed 7–3–90; 10:35 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 129
Thursday, July 5, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: Action, the Federal Domestic Volunteeer Agency.

ACTION: Information collection submitted to the Office of Management and Budget for review.

SUMMARY: The following form(s) have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504 (h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments by August 6, 1990. Send comments to both:

Janet Smith, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525, Tel: (202) 634–9245
and
Desk officer for ACTION, Office of Management & Budget, 3002 New Executive Office Bldg., Washington, DC 20503, Tel: (202) 395–7316

Title of Form(s): Vista Project Application.

ACTION Forms No(s): A–1421

Need and Use: The information provided on this document by potential and existing sponsors is considered by ACTION in making initial and renewal assignments of VISTA volunteers.

Type of Request: Project Application

Respondent's Obligation to Reply: Required for initial/renewal benefits.

Descriptions of Respondents: Public agencies and private non-profit, including small, grass-roots organizations.

Frequency of Collection: Annually

Estimated Number of Annual Responses: 1500 total (1000 new submissions; 500 renewal submissions.

Average Burden Hours per Response: For new applicants—10 hours/average for renewal applicants—7 hours/average.

Estimated Annual Reporting or Disclosure Burden: Same as above.

Janet Smith,
Clearance Officer, ACTION.

[FR Doc. 90–15520 Filed 7–3–90; 8:45 am]
BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is amending three of its Privacy Act (PA) Systems of Records maintained by the Agricultural Research Service (ARS).

EFFECTIVE DATE: This action is effective immediately on July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, PA Coordinator, ARS, USDA, Room 331, Building 005, BARC-West, Beltsville, Maryland 20705; telephone (301) 344–3928, (FTS) 344–3928.

SUPPLEMENTARY INFORMATION: Pursuant to the PA, 5 U.S.C. 552a, USDA hereby takes the following action: I. Three Systems of Records maintained by ARS are being amended for the following reasons:

I. USDA/ARS–1, "Solicitation of Bids or Proposals for Procurement Contracts," is being amended to indicate changes in the (1) system location and (2) system manager(s) and address.

II.USDA/ARS–3, "Dosimetry Report on Individuals in USDA Required by Radiological Safety Committee to Wear Radiation Exposure Measuring Badges when Appropriate," is being amended to indicate changes in the (1) system location and (2) system manager(s) and address.

III. USDA/ARS–4, "Education and Radiation Training and Experience Reports on Persons in USDA Using Radioactive Materials and/or Equipment which Emit Ionizing Radiation," is being amended to indicate changes in the (1) system location and (2) system manager(s) and address.

Accordingly, notice is hereby given that USDA amends its Systems of Records as follows:

USDA/ARS–1

SYSTEM NAME:

Solicitation of Bids or Proposals for Procurement Contracts.

SYSTEM LOCATION:

Office of the Director, USDA-ARS-Contracting and Assistance Division, 6303 Ivy Lane, Room 838, Greenbelt, Maryland 20770–1433
Office of the Director, USDA-ARS-Facilities Construction Management Division, 6303 Ivy Lane, Room 809, Greenbelt, Maryland 20770–1433
Area Administrative Officer, USDA-ARS-Beltsville Area, NAL Building, 4th Floor, Room 429, Beltsville, Maryland 20705
Area Administrative Officer, USDA-ARS-Southern Plains Area, 7607 Eastmark Drive, College Station, Texas 77840

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director, Contracting and Assistance Division, USDA–ARS, 6303 Ivy Lane, Room 838, Greenbelt, Maryland 20770–1433; Office of the Director, Facilities Construction Management Division, USDA–ARS, 6303 Ivy Lane, Room 809, Greenbelt, Maryland 20770–1433, or the Area Administrative Officers at the addresses given herein.

USDA/ARS–3

SYSTEM NAME:

Dosimetry Report on Individuals in USDA Required by Radiological Safety Committee to Wear Radiation Exposure Measuring Badges when Appropriate.

SYSTEM LOCATION:

Radiological Safety Staff, ARS, USDA, 6303 Ivy Lane, 5th and Ground Floors, Greenbelt, Maryland 20770–1433.

SYSTEM MANAGER(S) AND ADDRESS:

Radiological Safety Officer, Radiological Safety Staff, ARS–USDA, 6303 Ivy Lane, Room 530, Greenbelt, Maryland 20770–1433.

USDA/ARS–4

SYSTEM NAME:

Education and Radiation Training and Experience Reports on Persons in USDA

Using Radioactive Materials and/ or Equipment which Emit Ionizing Radiation.

SYSTEM LOCATION:

Radiological Safety Staff, ARS, USDA, 6303 Ivy Lane, 5th Ground Floors, Greenbelt, Maryland 20770–1433.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Radiological Safety Officer, Radiological Safety Staff, ARS–USDA, 6303 Ivy Lane, Room 530, Greenbelt, Maryland 20770–1433.

Issued in Washington, DC, on June 28, 1990.

Clayton Yeutter,

Secretary.

[FR Doc. 90–15519 Filed 7–3–90; 8:45 am]

BILLING CODE 3410–03–M

Food and Nutrition Service

National Advisory Council on Maternal, Infant; and Fetal Nutrition Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Council meeting:

Date and Time: August 8–10, 1990, 9 a.m.

Place: Food and Nutrition Service, Park Office Center, 3101 Park Center Drive, Fourth Floor Conference Room, Alexandria, Virginia 22302.

Purpose of Meeting: The Council will continue its study of the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

Agenda: The agenda items will include the following: Formulation of recommendations for the Council's 1990 report to the President and Congress; and discussion of general program operations. Recommendations for the report will address administrative and legislative changes for the WIC and CSF Programs.

Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the Council before or after the meeting.

Persons wishing to file written statements or to obtain additional information about this meeting should contact Tama Eliff, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3730.

Dated: June 13, 1990.

Betty Jo Nelsen,

Administrator.

[FR Doc. 90–15504 Filed 7–3–90; 8:45 am]

BILLING CODE 3410–30–M

Soil Conservation Service

Mason County 4-H Camp Critical Area Treatment RC&D Measure Plan, West Virginia

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mason County 4–H Camp Critical Area Treatment RC&D Measure, Mason County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is critical area treatment. The measure is designed to stabilize by regrading and shaping, and stabilizing approximately 0.5 acres of land that has an average erosion rate of 100 tons per acre per year. Conservation practices include critical area treatment, seeding, and heavy use area protection.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 25, 1990.

Rollin N. Swank,

State Conservationist.

[FR Doc. 90–15482 Filed 7–3–90; 8:45 am]

BILLING CODE 3410–16–M

Sandy Creek Watershed; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Sandy Creek Watershed in Pittsylvania and Halifax Counties, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, USDA, Soil Conservation Service, Federal Building, Room 9201, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771–2455.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement are not needed for this project.

The project concerns a Watershed Plan for the protection of 9,749 acres of cropland, pastureland and forestland in Pittsylvania and Halifax Counties, Virginia. This protection will be accomplished by the installation of soil and water conservation practices.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill

single-copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting Mr. George C. Norris, State Conservationist. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10901, Resource Conservation and Development Program. Executive Order 12372 regarding inter-government review of federal and federally-assisted programs and projects is applicable.)

Dated: June 22, 1990.

George C. Norris,

State Conservationist.

Finding of No Significant Impact for Sandy Creek Watershed, Pittsylvania Soil and Water Conservation District, Halifax Soil and Water Conservation District, Pittsylvania and Halifax Counties, VA

The watershed protection measures to be installed in the Sandy Creek Watershed will be funded on a cost-share basis under the authority of the Watershed Protection and Flood Prevention Act, Public Law 83-566. An interdisciplinarian evaluation of the environment was made by the Soil Conservation Service (SCS) in consultation with local, state and federal agencies and interested persons during the planning of this measure.

The purpose of the Watershed Plan is to reduce on-farm damages and to improve adjacent and downstream water quality caused by erosion and sediment delivery. Community benefits will result through the installation of this Plan which is sponsored by the Pittsylvania Soil and Water Conservation District, the Halifax Soil and Water Conservation District, the Town of Halifax, the Pittsylvania County Board of Supervisors and the Halifax County Board of Supervisors.

Planned Action

Treatment includes the protection of 5,597 acres of cropland, 1,877 acres of pastureland and 2,275 acres of forestland through the installation of enduring and management-type conservation practices.

Environmental Impact

The proposed Plan will reduce sediment damages and improve water quality

No know threatened or endangered species are listed for the Watershed. Three candidate species occur in the Watershed. The conservation practices planned for this Watershed would protect these species.

An inventory of all known archeological and cultural resources has been made and the sites are located on U.S.G.S. Quadrangle Maps for references by SCS personnel. This is to prevent any soil disturbing activity at any known sites.

The area to receive treatment has 2,615 acres of prime farmland.

Adverse Environmental Impacts Which Cannot Be Avoided

Installation of the proposed works of improvement will have short-term adverse impacts on noise, dust and exhaust levels. These levels will increase only during construction.

Alternatives

1. No action. With no action, there would be continued erosion and sediment damage to the resource bases and downstreams.

2. The National Economic Development Plan would protect 8,369 acres of cropland, pastureland and forestland. Sediment delivered to streams would continue at approximately 22,521 tons per year.

3. The Resource Protection Plan would protect 9,749 acres of cropland, pastureland and forestland. Sediment delivered to streams would be reduced by 96,092 tons per year.

Short-term Users vs. *Long-term Productivity*

The reduction in erosion and sediment damages and the installation of conservation practices will improve the quality of life in this area.

Commitment of Resources

Labor, capital resources and energy used by these planned actions will be irretrievably and irreversibly committed.

Conclusion

This Watershed Plan has been planned and environmentally evaluated to ensure that effects are commensurate with the impact described in this Finding of No Significant Impact. The Environmental Assessment and Environmental Evaluation file are available for public inspection through the office of Mr. George C. Norris, State Conservationist, USDA, Soil Conservation Service, Federal Building, Room 9201, 400 North Eighth Street, Richmond, Virginia 23240-9999, telephone (804) 771-2455.

I have reviewed the Environmental Assessment and have determined this Watershed Plan will not result in significant impact on the human environment. I conclude that an Environmental Impact Statement is not necessary.

Dated: June 22, 1990.

George C. Norris,

State Conservationist.

[FR Doc. 90-15384 Filed 7-3-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 70609-0126

RIN 0693-AA69

Proposed Minor Technical Changes To Federal Information Processing Standard (FIPS) 146, GOSIP

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to propose minor technical changes to Federal Information Processing Standard 146, Government Open Systems Interconnection Profile (GOSIP), which was announced as a new standard in the Federal Register [53 FR 32270) on August 24, 1988. The changes which are detailed below stem from changes in the technical agreements upon which GOSIP is based, changes in the progress of voluntary industry standards, and other developments which necessitate adjustments to FIPS 146, which is Version 1 of this GOSIP. These minor technical changes make FIPS 146 less restrictive, and do not change the implementation schedule. The changes will be documented in the revision to FIPS 146, which is currently under review. See Supplementary Information Section below.

Before issuing these changes, NIST solicits the views of manufacturers, the public, and State and local governments. Interested parties may obtain a copy of GOSIP (FIPS PUB 146) from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161.

DATES: Comments on these proposed changes must be received on or before August 20, 1990.

ADDRESSES: Writen comments concerning these proposed changes should be sent to: Director, National Computer Systems Laboratory, ATTN: Proposed Changes to Version 1 of FIPS 146, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Gerard F. Mulvenna, National Institute of of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3631.

SUPPLEMENTARY INFORMATION:

Background

Federal Information Processing Standard 146, Government Open Systems Interconnetion Profile (GOSIP), Version 1, was based on technical implementation agreements reached by the NIST Workshop for Implementors of OSI and documented in NBS Special Publication 500–150, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 1, Edition 1, December 1987 (U.S. Government Printing Office SN–003–003–02838–0, phone (202) 783–3238). The standard defines a common set of data communication protocols which enable systems developed by different vendors to interoperate and enable the users of different applications on these systems to exchange information. Version 1 of GOSIP supports message handling systems and file transfer, access and managment applications.

A revision to FIPS 146, which has been proposed as Version 2 of GOSIP, on July 13, 1989 (54 FR 29597) provides for additional protocols and functionality including virtual terminal service, office document architecture, integrated services digital network, and other protocols. NIST is considering the comments received concerning the proposed revision to FIPS 146 prior to submitting the revised standard to the Secretary of Commerce for approval.

Proposed Changes to FIPS 146, GOSIP

NIST proposes that the following changes be incorporated into the Government Open Systems Interconnection Profile (GOSIP), issued as Federal Information Processing Standard (FIPS) 146 on August 13, 1988. These changes will not affect the date for implementation of Verson 1 of GOSIP which is August 15, 1990. These changes have been requested by participants in the NIST Implementators Workshop and by orgranizations submitting comments on the proposed revision to FIPS 146.

1. Since NBS Special Publication 500–150, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 1, Edition 1, was published, errata have been added to those agreements, primarily affecting file transfer access and management and other upper layer protocol, to correct problems in the original agreements and to align with agreements being developed internationally. NIST propose modifying FIPS 146 (Version 1 of GOSIP) to reverence NIST Special Publication 500–177, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 3 (latest edition to be available from U.S. Government Printing Office). This document contains the needed corrections.

2. FIPS 146 (section 5.3.2) required that private messaging systems within the government be capable of routing on administration name, private domain names, organization name, organization unit and personal name. The requirement that private messaging systems be capable of routing based on personal name will be deleted. This change will make GOSIP less restrictive and expand the range of messaging systems that the GOSIP compliant.

3. FIPS 146 (GOSIP Version 1) implementations will use the Network Service Access Point (NSAP) Address structure in Figure 5.1.3 in the proposed revision to FIPS 146. This change will align the current standard with the routing standards currently being developed by the International Organization for Standardization (ISO).

4. FIPS 146 (Version 1 of GOSIP) (section 4.2.3) required that processing of Protocol Data Units by the Connectionless Network Layer Protocol be in order of priority. This requirement will be deleted.

5. Section 6 of FIPS 146 (Version 1 of GOSIP) describes a general architecture for OSI security, defines a set of optional security services that may be supported within the OSI model, and outlines a number of mechanisms that can be used in providing the service. Users will be referred to the revised Security Options Section, which is included in the proposed revision to FIPS 146.

This revised section has been and continues to be optional and does not contain protocols formats, or minimum requirements, but it does provide updated information on security options needed by users. Copies of the proposed revision to FIPS 146 are available from the Standard Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

Dated: June 28, 1990.

John W. Lyons,

Director.

[FR Doc. 90–15596 Filed 7–3–90; 8:45 am]

BILLING CODE 3510–CN–M

Visiting Committee on Advanced Technology of the National Institute of Standards and Technology; Meeting

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Friday, July 20, 1990, from 2 p.m. to 3 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to fully examine and discuss FY 1992 budget planning information for the National Institute of Standards and Technology.

DATES: The meeting will convene July 20, 1990, at 2 p.m. and adjourn at 3 p.m. on July 20, 1990. The entire meeting will be closed.

ADDRESSES: The meeting will be held in room 5840, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 20, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve

examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: June 28, 1990.

John W. Lyons,

Director.

[FR Doc. 90-15597 Filed 7-3-90; 8:45 am]

BILLING CODE 3510-13-M

Announcement of Workshop for Users and Implementors of Integrated Services; Digital Network (ISDN); Meeting

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Notice.

SUMMARY: The National Computer Systems Laboratory (NCSL) at the NIST announces a meeting of the North American ISDN Users' Forum (NIU-Forum). The NIU-Forum was formed under the Federal Technology Transfer Act of 1986 and is a consortium of businesses interested in creating a strong user voice in the implementation of Integrated Services Digital Network (ISDN) and to ensure that the emerging ISDN services meet users' application needs. Membership in the NIU-Forum remains open to interested United States businesses, and such businesses should contact NIST for further information at the address shown below.

Tutorials focusing on facsimile, imaging, optical disk, multimedia, optical character recognition, ISDN Audio/Data Conferencing, Satellites and ISDN, and an introduction to the NIU-Forum will be conducted on August 6, 1990. This Forum will consist of joint workshops for the Users' (IUW) and Implementors' (IIW). The IUW will continue to work identifying, defining, and prioritizing user applications of ISDN. The IIW will contniue defining implementation agreements for ISDN. Working group meetings will discuss issues related to the use and implementation of ISDN technology. Manufacturers and service providers are invited to participate in this workshop.

DATES: The North American ISDN Users' Forum (NIU-Forum) will be held at NIST, August 6–9, 1990. The next meeting of the NIU-Forum will be held at NIST, November 5–8, 1990.

ADDRESSES: To obtain registration forms for the workshop, companies may contact: ISDN Workshop, Attn: Lori Phillips, NIST, Administration Building, room A903, Gaithersburg, MD 20899; 301/975-3881. Upon receipt of the completed registration form, additional information will then be mailed to the registrant.

FOR FURTHER INFORMATION CONTACT: Dawn Hoffman, 301/975-2937.

SUPPLEMENTARY INFORMATION: The registration fee before July 13, 1990 will be $275. After July 13, the registration fee will be $325. Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshop.

Dated: June 27, 1990.

John W. Lyons,

Director.

[FR Doc. 90-15506 Filed 7-3-90; 8:45 am]

BILLING CODE 3510-CN-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Man-made Fiber Textile Products Produced or Manufactured in Pakistan

June 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting certain import limits.

EFFECTIVE DATE: June 9, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States agreed to increase the current designated consultation level for Category 659. The current limit for Category 615 is being increased for swing and carryforward, reducing the limit for Categories 613/614 to account for the swing applied. As a result, the current limit for Category 659, which has been filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48293, published on November 22, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designated to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 27, 1990.

Commissioner of Customs

Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of November 16, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on July 9, 1990, you are directed to adjust the limits for man-made fiber products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Pakistan:

Category	Adjusted Twelve-Month Limit [1]
613/614	12,995,727 square meters.
615	16,879,506 square meters.
659	106,600 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-15460 Filed 7-3-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary, DOD.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: August 10, 1990, 9 a.m. to 5 p.m.; August 11, 1990, 9 a.m. to 3 p.m.

ADDRESSES: August 10, The Pentagon, Room 3E869, Washington, DC; August 11, Embassy Suites Hotel, Adams Morgan Room, 1402 Eads Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, Public Affairs Officer, DoD Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331–1100, Telephone: (202) 325–0867.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the national educational goals, advanced placement courses, education of handicapped dependents, academic achievement encouragement, mentor support program, minority recruitment, the teacher transfer program, communications throughout the system, initiatives in the DoDDS Management Improvement Program, and responses to the recommendations made by the Council during its April meeting.

Dated: June 29, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–15545 Filed 7–3–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18 July 1990.

Time: 0830–1200.

Place: NORAD Colorado Springs, Co.

Agenda: The Army Science Board (ASB) 1990 Summer Study on The Use of Army Systems and Technologies in the National War on Drugs will meet for discussions focused on the current mission, functions and technology challenges facing the Army's involvement in the War on Drugs. The briefings will be classified and therefore will be closed to the Public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782

Sally A. Warner,

Administrative Officer, Army Science Board

[FR Doc. 90–15605 Filed 7–3–90; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Proposed Amendment of Comprehensive Plan and Basin Regulations: Water Code and Administrative Manual—Part III Water Quality Regulations

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold public hearings in accordance with this notice to receive comments on proposed amendments to the Commission's Comprehensive Plan to upgrade water quality standards for portions of the tidal Delaware River.

DATES: The public hearings are scheduled as follows: October 2, 1990 from 2 p.m. to 5 p.m., resuming at 7 p.m.; and October 3, 1990 from 2 p.m. to 5 p.m.

ADDRESSES: The October 2, 1990 hearing will be held at the Quality Inn, 1083 Route 206, Bordentown, New Jersey.

The October 3, 1990 hearing will be held at the Holiday Inn, 4th and Arch Streets, Philadelphia, Pennsylvania.

Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION:

Background

Current water quality standards for a portion of the tidal Delaware River do not meet the fishable and swimmable water quality goals of the federal Clean Water Act. Federal regulations require that use attainability analyses be conducted for streams which have standards that do not meet these federal goals. Six considerations are mentioned in the U.S. Environmental Protection Agency (USEPA) regulations concerning the attainment of "fishable and swimmable" waters, including whether or not upgrading of standards "* * * would result in substantial and widespread economic and social impact." The Delaware River Basin Commission, with the support of the states of Delaware, New Jersey and Pennsylvania and the USEPA, has completed a use attainability assessment of the Delaware Estuary to determine whether upgraded standards

consistent with the federal goals are attainable.

As noticed in the May 15, 1990 (Vol. 55, No. 94) issue of the **Federal Register** on June 14, 1990 the Commission held a public briefing to present its proposed recommendations and the bases for the various proposals. Discussions included the Delaware River water quality needed and the upgraded wastewater treatment needed to achieve the required water quality levels. Other pollution abatement needs and the procedures that will be followed to develop the program to implement the upgraded treatment were also reviewed. The study results and recommendations are presented in a series of reports which are summarized in the following three: Report on the Attainability of Swimmable Water Quality; Report on the Attainability of Fishable Water Quality; and Attaining Fishable and Swimmable Water Quality in the Delaware Estuary: Final Report. Copies of these reports may be obtained by contacting Susan M. Weisman at the Commission.

Summary of Proposals to Upgrade Water Quality Standards

The Delaware Estuary Use Attainability study concluded that certain revisions to water quality standards should be made. Between the Chesapeake and Delaware Canal and the Burlington-Bristol Bridge current standards call for recreational quality suitable for boating and other secondary contact recreational activities, but no primary contact sports such as swimming or water skiing. The Commission now recommends that the reaches from the C & D Canal upstream to the Commodore Barry Bridge and from the Burlington-Bristol Bridge downstream to about a mile above the Tacony-Palmyra bridge be upgraded for swimming and other primary contact recreational activities. The reach between the Tacony-Palmyra Bridge and the Commodore Barry Bridge will remain classified for boating and secondary contact recreation since this reach is significantly impacted by combined sewer overflows from Philadelphia and Camden at this time. It is recommended that the use classification for this reach be reexamined following completion of combined sewer overflow modifications.

Between the Delaware Memorial Bridge and about a mile above the Tacony-Palmyra Bridge current standards call for water quality suitable for a minimal level of fish and other aquatic life: "maintenance of resident fish". The Commission is now recommending that this entire reach be upgraded to support the full life cycle of a balanced aquatic community, including spawning.

The subjects of the hearing will be as follows:

Amendments to the Comprehensive Plan and Basin Regulations: Water Code and Administrative Manual—Part III Water Quality Regulations Relating to Water Quality Standards for Portions of the Tidal Delaware River.

Article 3 of the *Water Code of the Delaware River Basin* sets forth the water quality stanards and guidelines for the Delaware River Basin. The Commission's Administrative Manual—Part III, Water Quality Regulations, applies to all waste dischargers, public and private, using the waters of the Delaware River Basin. It is proposed to:

Amend the Comprehensive Plan and Article 3 of the *Water Code of the Delaware River Basin*, and the Commission's Administrative Manual—Part III, Water Quality Regulations, which are referenced in 18 CFR part 410, as follows:

1. Redesignate subsection 3.30.2B.2.c. as 3.30.2B.2.e.
2. In 3.30.2B.2., subsections c. and d. are added to read as follows:
   3.30.2B.2.c. spawning and nursery habitat for anadromous fish,
   3.30.2B.2.d. passage of catadromous fish,
3. In 3.30.2B.3., subsection a. is revised to read as follows:
   3.30.2B.3.a. recreation;
4. In 3.30.2B.3., subsection b. is removed.
5. In 3.30.2C.1., subsection b. is revised to read as follows:
   3.30.2C.1.b. Not less than 4.0 mg/l at any time.
6. In 3.30.2C., subsection 8. is revised to read as follows:
   3.30.2C.8. Bacteria.
   a. Fecal Coliform. Maximum geometric average 200 per 100 milliliters.
   b. Enterococcus. Maximum geometric average 33 per 100 milliliters.
7. In 3.30.2D., subsection 2. is revised to read as follows:
   3.30.2D.2. The carbonaceous and nitrogenous oxygen demand from all outfalls in the zone (exclusive of combined sewer bypass and stormwater) shall not exceed that assigned by Commission regulations.
8. Redesignate 3.30.3B.2c. as 3.30.3B.2.e.
9. In 3.30.3B.2., subsection a. is revised to read as follows:
   3.30.3B.2.a. maintenance and propagation of resident fish and other aquatic life,
10. In 3.30.3B.2., subsections c. and d. are added to read as follows:
    3.30.3B.2.c. spawning and nursery habitat for anadromous fish,
    3.30.3B.2.d. passage of catadromous fish,
11. In 3.30.3C., subsection 1. is revised to read as follows:
    3.30.3C.1. Dissolved Oxygen. Not less than 4.0 mg/l at any time.
12. In 3.30.3C.1., subsections a. and b. are removed.
13. In 3.30.3C., subsection 8. is revised to read as follows:
    3.30.3C.8. Bacteria.
    a. Fecal Coliform. Maximum geometric average 770 per 100 milliliters.
    b. Enterococcus. Maximum geometric average 88 per 100 milliliters.
14. In 3.30.3D., subsection 2. is revised to read as follows:
    3.30.3D.2. The carbonaceous and nitrogenous oxygen demand from all outfalls in the zone (exclusive of combined sewer bypass and stormwater) shall not exceed that assigned by Commission regulations.
15. In 3.30.4B.2., a. is revised to read as follows:
    3.30.4B.2.a. maintenance and propagation of resident fish and other aquatic life,
16. Redesignate subsection 3.30.4B.2.c. as 3.30.4B.2.e.
17. In 3.30.4B.2, subsections c. and d. are added to read as follows:
    3.30.4B.2.c. spawning and nursery habitat for anadromous fish,
    3.30.4B.2.d. passage of catadromous fish.
18. In 3.30.4B.3., subsections a. and b. are added to read as follows:
    3.30.4B.3.a. recreation—secondary contact above R.M. 81.8,
    3.30.4B.3.b. recreation below R.M. 81.8;
19. In 3.30.4C., subsection 1. is revised to read as follows:
    3.30.4C.1. Dissolved Oxygen.
    a. Above R.M. 81.8 not less than 4.0 mg/l at any time.
    b. Below R.M. 81.8 not less than 5.0 mg/l at any time.
20. In 3.30.4C., subsection 8. is revised to read as follows:
    3.30.4C.8. Bacteria
    a. Fecal Coliform.
    (1) Above R.M. 81.8 maximum geometric average 770 per 100 milliliters.
    (2) Below R.M. 81.8 maximum geometric average 200 per 100 milliliters.
    b. Enterococcus.
    (1) Above R.M. 81.8 maximum geometric average 88 per 100 milliliters.

(2) Below R.M. 81.8 maximum geometric average 33 per 100 milliliters.

21. In 3.30.2D., subsection 2. is revised to read as follows:
3.30.4D.2. The carbonaceous and nitrogenous oxygen demand from all outfalls in the zone (exclusive of combined sewer bypass and stormwater) shall not exceed that assigned by Commission regulations.
22. In 3.30.5B., subsection 2. is revised to read as follows:
3.30.5B.2.
a. maintenance and propagation of resident fish and other aquatic life,
b. passage of anadromous fish,
c. spawning and nursery habitat for anadromous fish except where precluded by natural conditions,
d. passage of catadromous fish,
e. wildlife.
23. In 3.30.5B.3., subsection a. is revised to read as follows:
3.30.tB.3.a. recreation;
24. In 3.30.5B.3., subsection b. is removed.
25. In 3.30.5C., subsection 1. is revised to read as follows:
3.30.5C.1. Dissolved Oxygen.
a. 24-hour average concentration shall not be less than 6.0 mg/1 from R.M. 59.5 to R.M. 48.2.
b. Not less than 5.0 mg/1 at any time.
26. In 3.30.5C., subsection 8. is revised to read as follows:
3.30.5C.8. Bacteria.
a. Fecal Coliform. Maximum geometric average 200 per 100 milliliters.
b. Enterococcus. Maximum geometric average 35 per 100 milliliters.
27. In 3.30.5D., subsection 2. is revised to read as follows:
3.30.5D.2. The carbonaceous and nitrogenous oxygen demand from all outfalls in the zone (exclusive of combined sewer bypass and stormwater) shall not exceed that assigned by Commission regulations.
28. Redesignate subsection 3.30.6B.2.d. as 3.30.6B.2.f.
29. In 3.30.6B.2., add subsections d. and e. to read as follows:
3.30.6B.2.d. spawning and nursery habitat for anadromous fish except where precluded by natural conditions,
3.30.6B.2.e. passage and nursery habitat for catadromous fish,
30. In 3.30.6C.1., subsection b. is revised to read as follows:
3.30.6C.1.b. Not less than 5.0 mg/l at any time.
31. In 3.30.6C., subsection 8. is revised to read as follows:
3.30.6C.8. Bacteria.
a. Fecal Coliform. Maximum geometric average 200 per 100 milliliters.
b. Enterococcus. Maximum geometric average 35 per 100 milliliters.
c. Coliform. MPN (most probable number) not to exceed federal shellfish standards in designated shellfish areas.
32. Redesignate 3.30.6C.10. and 3.30.6C.11. as 3.30.6C.9. and 3.30.6C.10., respectively.
33. In 3.30.6D., subsection 2. is revised to read as follows:
3.30.6D.2. The carbonaceous oxygen demand from an outfall (exclusive of combined sewer bypass and stormwater) shall not exceed that assigned by Commission to maintain stream quality objectives.

Delaware River Basin Compact, 75 Stat. 688.

A document reviewing the bases for these proposed water quality standards modifications will be available on or about August 15, 1990. The document will discuss the proposed amendments and identify issues on which testimony would be of special interest. In addition, a document entitled "Proposed Revisions to DRBC Water Quality Regulations (Based on DEL USA Final Report)", contrasting the current and proposed water quality regulations, is currently available. Copies of these documents may be obtained by contacting Seymour Gross at the Commission at (609) 883–9500.

Persons wishing to testify at these hearings are requested to notify the Secretary prior to the hearings.

Dated: June 27, 1990.

Susan M. Weisman,

Secretary.

[FR Doc. 90–15483 Filed 7–3–90; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Closed Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board followed by a meeting of the full Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This notice is to inform the general public of these meetings.

DATE: July 12, 1990.

TIME: Executive Committee, 11 a.m. to 11:55 a.m. (e.d.t.); National Assessment Governing Board, 12 p.m. (e.d.t.) until adjournment.

LOCATION: U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC 20005–4013.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street NW., Suite 7322, Washington, DC 20005–4013. Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297) (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee will meet by telephone conference call on July 12, 1990 from 11 a.m. until 11:55 a.m. The Committee will discuss the qualifications of specific individuals nominated for Board membership. Beginning at 11:55 a.m., the remaining members of the Board will join the teleconference to take final action on the nominees recommended by the Executive Committee for Board membership. The full Board meeting will convene at 12 p.m. and continue until the completion of business. The meeting will be closed to the public under the authority of 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. appendix 2) and under exemptions (2) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b). Committee and Board discussions are

likely to disclose (1) matters that relate solely to the internal personnel rules and practices of an agency and (2) information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c).

A summary of the activities and related matters, which are informative to the public consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street NW., Suite 7322, Washington, DC, from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-15653 Filed 7-3-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent To Award a Grant to So-Luminaire International, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-09CE15375 to So-Luminaire Intenational, Inc. to determine the economic and energy conservation benefits of utilizing the So-Luminaire daylighting equipment in lieu of conventional electrical lighting to illuminate the interior of an existing retail supermarket which will have a total estimated cost of $97,900 to be provided by DOE.

SCOPE: The grant will provide funding for So-Luminaire to fabricate and assemble 76 heliostat-type sunlight-reflecting systems for installation on an existing retail supermarket in Phoneix, Arizona.

The purpose of the project is to measure electrical energy consumption during daylight hours after installation of the system and compare that to data previously collected by the retail store. Should the data gathered on electrical energy consumption show reduced energy use and lower costs than before installation of the So-Luminaire system, then the worthiness of this new type of daylighting system will have proven economic and energy conservation benefits.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to So-Luminaire, a company with high qualifications in this specialized field of technology. So-Liminaire has successfully licensed this patented invention from the inventor. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of the grant shall be 24 months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Steve Patton, PR-541, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-15591 Filed 7-3-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award a Grant to Merrill Corp.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award under Grant Number DE-FG01-90CE15483 to Merrill Corporation to assist in the engineering, development, construction and testing of a downhole neutron flux monitor.

SCOPE: This grant will aid in funding in the amount $80,000 for a new device for monitoring the geology of wellholes in oil and gas drillings. The technology gives high definition pictures of reservoir conditions that will considerably improve the accuracy of finding oil. This advantage applies both in new wells and before abandonment of existing wells to insure the maximum possible recovery of reserves. The potential invention represents a marked change in design that is anticipated to result in a definite improvement. Merrill Corporation will be the licensor based upon the patent ownership. Halliburton, one of the major wireline companies, will be involved through the development of the technology and are providing use of their test facilities in Houston.

ELIGIBILITY: Eligibility of this award is being limited to Merrill Corporation. Dr. John B. Czirr, inventor, has 35 years experience in experimental nuclear physics and has been involved for most of his professional career in developing and testing innovative nuclear particle detectors. The monitor is being built in accordance with the drawings and specifications provided by Merrill Corporation. It has been determined that this is a project with a high technical merit, representing an innovative technology that has a strong possibility of adding to the national energy resources.

The term of this grant shall be for 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Rosemarie Marshall, PR-542, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-15589 Filed 7-3-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award a Grant to Andrew O'Neal

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satsifying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-90CD15473 to Mr. Andrew O'Neal for an improved refrigeration system which will have a total estimated cost of $79,482 to be provided by DOE.

SCOPE: The grant will provide funding for Mr. O'Neal to test his new refrigeration system in the field. Mr. O'Neal will perform these tests in cooperation with four supermarket chains which have allowed him to install his system in one or more of their stores. Funding from this grant will also allow Mr. O'Neal to attend several technical meetings to publicize the results of the testing to members of the refrigeration industry.

The purpose of the project is to document the savings in power and the increases in efficiency to be gained by installing Mr. O'Neal's system on

existing commercial and industrial refrigeration systems. A market for the technology appears assured by virtue of the arrangement with large supermarket chains for demonstrating the system under practical field conditions.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to Mr. Andrew O'Neal. who has experience in providing simlar services and inventions to the industry. The inventor will be the licensor of this invention. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of the grant shall be approximately eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Gretchen Hukill, PR-541, 1000 Independence Avenue SW., Washington, DC 20584.

Thomas S. Keefe,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 90-15590 Filed 7-3-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-458-000, et al.]

Kansas Gas and Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 27, 1990.

Take notice that the following filings have been made with the Commission:

1. Kansas Gas and Electric Company

[Docket No. ER90-458-000]

Take notice that on June 20, 1990, Kansas Gas and Electric (KG&E) tendered for filing a proposed Transmission Service Agreement between KG&E and Kansas City Power and Light Company (KCP&L).

This filing is necessary to allow KCP&L to continue to receive power and energy from its accredited share of Wolf Creek Nuclear Generating Station. KG&E has requested an effective date of August 2, 1990.

Copies of the filing were served upon KCP&L and the Utilities Division of the Kansas Corporation Commission.

Comment date: July 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

Northern States Power Company (Minnesota) Northern States Power Company (Wisconsin)

[Docket No. ER90-349-000]

Take notice that on June 25, 1990, by submittals dated June 22, 1990, Northern States Power Company-Minnesota and Northern States Power Company-Wisconsin amended the filing in the referenced docket to submit additional information relating to the long-term transmission services agreement filed in this docket. Said additional information is available for review by members of the public in the Commission's public files.

Comment date: July 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER90-462-000]

Take notice that on June 22, 1990, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (Southern Companies), tendered for filing letter agreements amending a practice to allow recovery of fuel contract buyout costs under the Unit Power Sales Agreement between Southern Companies and Florida Power & Light Company dated February 18, 1982 (Rate Schedules FERC Nos. 57, 156, 810 74, and 133) and the Unit Power Sales Agreement between Southern Companies and Jacksonville Electric Authority dated May 19, 1982 (Rate Schedules FERC Nos. 58, 157, 811, 75, and 134). Southern Companies submit that the Unit Power Sales Agreements contemplate recovery of total cost of service and do not contain traditional fuel clause, therefore making waiver of the Commission's fuel clause regulations is unnecessary. In the alternative, Southern Companies petition for a waiver of the Commission's fuel clause regulations (18 CFR 35.14).

The change in practice is necessary to allow Southern Companies to recover the cost of certain fuel contract buyouts. Southern Companies submit that the Unit Power Sales Agreements contemplate recovery of Southern Companies' full cost of service, Southern Companies assert that the fuel contract buyouts have produced and will continue to produce ongoing benefits to the Unit Power Sales customers.

Copies of this filing were served upon Florida Power & Light Company and Jacksonville Electric Authority.

Comment date: July 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Georgia Power Company

[Docket No. EL90-35-000]

Take notice that on June 21, 1990, Georgia Power Company (Georgia Power) tendered for filing revised tariff sheets to its FERC Electric Tariffs, Original Volume No. 1 (full requirements service) and Original Volume No. 2 (partial requirements service) and a petition for waiver of the Commission's fuel adjustment clause regulations.

Georgia Power states that its filing is necessry to permit it to recover from its territorial wholesale customers an appropriate share of the cost of buying out or modifying four long-term coal supply agreements. Georgia Power states that its purchase of repalcement coal at more favorable prices has and will continue to produce cumulative savings to its customers in excess of the cumulative amortization of buyout/buydown costs which the Company proposes to recover as fuel costs through the fuel cost recovery mechanisms of its tariffs.

Georgia Power seeks waiver of the Commission's notice requirement to permit an effective date of April 1, 1987 for the revised tariff sheets.

Georgia Power states that it has served copies of its filing on its two full requirements and three partial requirements customers.

Comment date: July 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER90-455-000]

Take notice that on June 13, 1990, Central Vermont Public Service Corporation (Central Vermont) tendered for filing in accordance with Article IV, section A(2) of the Agreement between Central Vermont and the Vermont Electric Generation and Transmission Cooperative, Inc. the following:

Exhibit 1 Revenue Comparison setting forth the forecast and actual revenue for 1989.
Exhibit 2 Cost Report computing the forecast costs for 1989.
Exhibit 3 Cost Report computing the actual costs for 1989.

Comment date: July 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Proceudre (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15466 Filed 7-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9607-002 Arkansas]

JDJ Energy Co., Inc.; Availability of Environmental Assessment

June 27, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the proposed DeGray Reservoir Reregulating Dam Project located on the Caddo River in Clark County, near Caddo Valley, Arkansas, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 1000, of the Commission's offices at 325 North Capitol Street, NW., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15467 Filed 7-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1417-001-Nebraska]

Central Nebraska Public Paper and Irrigation District; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

June 27, 1990.

The license for the Kingsley Hydro Project No. 1417 located on the North Platte River in Keith County, Nebraska, expired on July 29, 1987. The deadline for filing applications for new license was July 29, 1984. An application for new license has been filed as follows:

Project No.	Applicant	Contact
1417-001	Central Nebraska Public Power and Irrigation District.	Mr. Tom Watson, Crowell & Mooring, 1001 Pennsylvania Avenue NW., Washington, DC 20004.

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is August 30, 1990.

The following is the schedule and procedures that will be followed in processing the application.

Date	Action
June 19, 1990	The Commission notifies the applicant that its application has been accepted.
July 2, 1990	The Commission issues public notice of application that has been accepted describing project and established August 30, 1990, as the date for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 357-0809.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15468 Filed 7-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1835-013-Nebraska]

Nebraska Public Power District; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

June 27, 1990.

The license for the Sutherland Hydro Project No. 1835 located on the North Platte River in Keith County, Nebraska, expired on June 30, 1987. The deadline for filing applications for new license was June 30, 1984. An application for new license has been filed as follows:

Project No.	Applicant	Contact
1835-013	Nebraska Public Power District.	Mr. Tom Watson, Crowell & Mooring 1001 Pennsylvania Avenue NW., Washington, DC 20004.

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is August 30, 1990.

The following is the schedule and procedures that will be followed in processing the application.

Date	Action
June 19, 1990	The Commission notifies the applicant that its application has been accepted.
July 2, 1990	The Commission issues public notice of application that has been accepted describing project and established August 30, 1990, as the date for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 357-0809.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15469 Filed 7-3-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

International Coal/Technology Export Directory

ACTION: Notice of preparation of Industry Director on Coal and Coal Technology Export Resources, second edition, for international distribution.

SUMMARY: To provide continuing support of the development of coal and coal technology export markets, the Office of Planning and Environment, Office of Fossil Energy of the Department of Energy is preparing the second edition of its comprehensive directory entitled "The Director of U.S. Coal and Technology Export Resources". Like the first edition, this

reference document will be targeted towards potential purchasers of U.S. coal and coal technology export resources and will be made available overseas through the Department of State and Commerce. Industry parties interested in inclusion in this directory that have an existing product or service for export should contact Sue Ellen Walbridge in writing at the address below for a complete set of detailed instructions (including an institution sheet, template, sample page, and data input format sheet) and schedule requirements.

DATES: Please respond by July 16, 1990.

ADDRESSES: Address correspondence to the Department of Energy, Office of Fossil Energy, Office of Planning and Environment, 1000 Independence Avenue, Southwest, Washington, DC 20585 to the attention of Sue Ellen Walbridge, FE–4, room 4G–067.

FOR FURTHER INFORMATION CONTACT: Sue Ellen Walbridge (FE–4), Policy Analyst, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7735.

Dated: June 27, 1990.

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 90–15588 Filed 7–3–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–49–NG]

BP Resources Canada Limited; Application for Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 15, 1990, of an application filed by BP Resources Canada Limited (BPRC) requesting blanket authorization to import up to 36.5 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. BPRC agrees to make quarterly reports detailing each transaction.

In addition to existing pipeline facilities the proposed import would utilize the Pacific Gas Transmission Company (PGT)/Pacific Gas and Electric Company (PG&E) Expansion Project. Application to construct and operate these expanded facilities (CP89–460) has been filed and is pending at the Federal Energy Regulatory Commission (FERC).

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., August 6, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestral Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John S. Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4523.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: BPRC, a Canadian corporation with its principal place of business in Calgary, Alberta, Canada, is a natural resources company with oil, gas and mining interests. BPRC is wholly owned by BP Canada Inc., which is indiretly owned in part by The British Petroleum Company. The proposed import would permit BPRC, either on its own behalf or as an agent on behalf of others, to import natural gas for sale to various customers in the United States, including industrial customers, local distribution companies, municipalities and other end-users. If the requested authorization is granted, BPRC states that gas would be transported in Canada on existing and new facilities of NOVA Corporation, Foothills Pipe Lines, Ltd., Westcoast Energy, Inc., and TransCanada Pipelines Ltd. In the United States, gas might be transported in the existing facilities of PGT and PG&E, the facilities to be constructed in the proposed PGT/PG&E Expansion Project and on existing facilities of Northwest Pipeline Corporation. Additionally, local distribution company facilities and other main line transmission systems in the areas served by the above referenced U.S. pipeline systems may also be used. Points of entry would be at Sumas and Kingsgate, Washington.

BPRC states that the proposed import transactions would be conducted on a short-term or spot market basis based on competitive factors in the marketplace. The company contemplates filing one or more applications for authority to import natural gas from Canada under gas purchase agreements for more than two years. A long-term authorization would be specifically sought for natural gas imported for markets in California to be served by the proposed PGT/PG&E Expansion Project.

In support of its application, BPRC asserts that the contemplated import transactions will be competitive because they will be voluntarily negotiated at arms length. Given the availability of competing suppliers, BPRC asserts that customers will not purchase imported gas unless it is needed and the price is competitive. Additionally, the company maintains that the requested authorization would enhance throughout on U.S. pipelines and would serve the public interest by improving the availability of competitive gas supplies to meet growing demands.

The decision of this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose the application should comment in their responses on the matters as they related to the requested import authority. The applicant asserts that the import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act NEPA (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments

received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of BPRC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington DC on June 26, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-15592 Filed 7-3-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of January 26 Through February 2,1990

During the Week of January 26 through February 2, 1990, applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 27, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Date	Name and location of applicant	Case No.	Type of submission
Jan. 1, 1990	Bi-State Petroleum, Sparks, Nevada	LEE-0010	Exception to the reporting requirements. If granted: Bi-State Petroleum would not be required to file Form EIA-821, "Annual Fuel Oil & Kerosene Sales Report."
Do	Gulf/Anderson's Gulf, Woodbridge, VA	RR300-6	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The November 22, 1989 Decision and Order (Case No. RF300-9998) issued to Anderson's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Kirk Brown's Gulf, Woodbridge, Virginia	RR300-7	Request for modification/rescission in the Gulf Refund Proceeding. If granted. The January 19, 1990 dismissal letter (Case No. RF300-10831) issued to Kirk Brown's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Hanover Gulf, Woodbridge, VA	RR300-8	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The January 19, 1990 dismissal letter (Case No. RF300-10898) issued to Hanover Gulf would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Exxon Corp./Georgia Pacific Corporation, Atlanta, GA	RR307-3	Request for Modification/Rescission in the Exxon Refund Proceeding. If granted: The August 31, 1989 Decision and Order (Case No. RF307-2296) issued to Georgia-Pacific Corporation in the Exxon Refund Proceeding would be modified regarding an additional amount of Exxon products purchased by the firm.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/26/90	Lawton Allen Service Station.	RF309-1386.
01/26/90	Arnold Schmeling	RF272-78446.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/29/90	Town of Brownsburg.	RF272-78447.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/26/90	Alumacraft Boat Co.	RF272-78443.
01/26/90	Nick Ugliuzza	RF272-78444.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/26/90	Robert W. Peacock.	RF272-78445.
01/30/90	Guy Bruno, Sr	RF307-10095.
01/30/90	Blue Oil Company, Inc.	RF272-78448.
01/31/90	John Iney	RF272-78449.
01/31/90	Ronald Iney	RF272-78450.
02/01/90	Joe Covington Exxon.	RF307-10096.
02/01/90	Elvin White	RF272-78451.
02/01/90	John Natt, Jr	RF272-78452.
02/01/90	Grover Trucking Co.	RA272-22.
01/26/90 thru 02/02/90.	Gulf Oil Refund Applications Received.	RF300-10069 thru RF300-10986.
01/26/90 thru 02/02/90.	Shell Oil Refund Applications Received.	RF315-9792 thru RF315-9820.
01/26/90 thru 02/02/90.	Atlantic Richfield Applications Received.	RF304-11172 thru RF304-11185.

[FR Doc. 90-15993 Filed 7-3-90; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $221.64 plus accrued interest obtained by the DOE under the terms of a Remedial Order issued to Green Oil Company (Green) Case No. LEF-0013. The balance of the Green remedial order fund will be deposited in the U.S. Treasury for use by the states in energy conservation programs in accordance with section 3003(d) of the Petroleum Overcharge Distribution and Restitution Act of 1986.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute funds obtained from Green pursuant to a Remedial Order issued to the firm on October 24, 1978. On May 1, 1990, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the Green remedial order fund..

In accordance with the Remedial Order, Green made direct refunds to its customers. As the Decision indicates, the DOE has concluded that the balance of the Green remedial order fund is in excess of the amount needed to make restitution to its injured customers and, therefore, should be deposited in the U.S. Treasury for use by the states in energy conservation programs in accordance with section 3003(d) of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Dated: June 26, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

June 26, 1990.

Name of Firm: Green Oil Company.
Date of Filing: February 23, 1990.
Case Number: LEF-0013

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR part 205, subpart V. On February 23, 1990, the ERA filed a Petition in connection with a Remedial Order issued by the DOE to Green Oil Company (Green).

I. Background

Green was a "retailer" of propane as that term was defined in 10 CFR 212.31 and operated two retail outlets in Letcher, South Dakota. A DOE audit of Green's records revealed that during certain periods between November 1, 1973 and August 31, 1975, Green committed possible price violations with respect to its retail sales of propane in violation of 10 CFR part 212, subpart F. On April 28, 1978, the ERA issued a Proposed Remedial Order (PRO) to Green alleging that these violations resulted in overcharges to Green's customers in the amount of $17,240.80 plus interest.

On October 24, 1978, the DOE issued the PRO as a final Remedial Order (RO). *Green Oil Co.*, Case No. DRW-0005. Under the terms of the RO, Green was required to refund $17,240.80 plus interest to its identifiable customers through the issuance of checks or credit memoranda. However, based upon an analysis of the firm's financial condition in February 1989, the ERA reduced the liability under the RO to $5,000. Green has certified to the ERA that refunds or credits have been made to all the identifiable customers that it was able to locate. However, since the firm was unable to contact all of its customers, it could not implement all of the direct refunds. On February 7, 1990, Green remitted to the DOE $221.64 representing the refunds due to customers it was unable to locate. Those funds were deposited into an interest-bearing escrow account maintained at the U.S. Treasury. This Decision and Order sets forth the procedures for the distribution of those funds plus accumulated interest in the Green escrow account.

On May 1, 1990, the OHA issued a Proposed Decision and Order (PDO) setting forth a tentative plan under which the balance of the Green remedial order fund would be deposited in the U.S. Treasury for use by the states in energy conservation programs in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-4507. In order to give notice to all potentially affected parties, a copy of the PDO was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 55 FR 18947 (May 7, 1990). We received no comments concerning the proposed refund procedures for the funds received from Green. Therefore, we will adopt the procedures in the PDO as final procedures for the distribution of the balance of the Green remedial order fund.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of the subpart V authority of the OHA to fashion procedures to distribute funds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982), and *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*,, 8 DOE ¶ 82,597 (1981).

We have considered the record in the present case and have determined that a subpart V proceeding is an appropriate mechanism for distributing the balance of the Green remedial order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Refund Procedures

PODRA requires the Secretary of Energy, through the OHA, to determine the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties and make those funds available to state governments for use in specified energy conservation programs. Generally, this determination occurs after the OHA has made an attempt to locate injured parties and has approved the claims made by firms who have established that they are entitled to refunds. However, in the present case, restitution has been made by the firm directly to identifiable customers who would be eligible for a refund. After reviewing the ERA's records regarding Green's actions in making refunds to the identified customers and its efforts to locate the remaining former customers, we have concluded that no further direct restitution is possible. We therefore believe that no useful purpose would be served by establishing a claims process for the remaining $221.64, and that it would be a wasteful use of resources to open a claims process. Accordingly, we have concluded that the $221.64 which Green remitted to the DOE is in excess of the amount that is needed to make restitution to its injured customers. Therefore, we have determined that this amount should be deposited in the U.S. Treasury for use by the states in energy conservation programs in accordance with the provisions of PODRA.[1]

It is therefore ordered That: the refund amount remitted to the Department of Energy by Green Oil Company pursuant to the Remedial Order issued on October 24, 1978, plus accrued interest, will be made available to the states for use in the four designated energy conservation programs in the manner prescribed by PODRA.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: June 26, 1990.

[FR Doc. 90-15594 Filed 7-2-90; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $287,993.71 plus accrued interest obtained by the DOE in connection with the settlement of an enforcement proceeding involving Pester Marketing Company (Pester). The Pester settlement fund will be available to customers who purchased regular gasoline and diesel fuel from Pester during the audit period November 1, 1973 through May 8, 1974.

DATE AND ADDRESS: Comments must be filed in duplicate by August 6, 1990, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to case number KEF-0134.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute funds obtained from Pester pursuant to an Order of the U.S. Bankruptcy Court for the Southern District of Iowa. The funds are being held in an interest-bearing escrow account maintained at the U.S. Treasury.

Under the proposed procedures, customers who purchased Pester regular gasoline or diesel fuel during the audit period may file claims for refunds. Applications for Refunds should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted by August 6, 1990, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: June 27, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 27, 1990.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Case: Pester Marketing Company.

Date of Filing: May 8, 1989.

Case Number: KEF-0134.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR part 205, subpart V. On May 8, 1989, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with the settlement of an enforcement proceeding involving Pester Marketing Company (Pester).

I. Background

At all times relevant to this proceeding, Pester was a "reseller-retailer" of motor gasoline and diesel fuel as that term was defined in 10 CFR 212.31. The firm operated 86 outlets located in Iowa, Missouri and Illinois. During the period of federal price controls, the firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth in 10 CFR parts 210, 211 and 212, and predecessor regulations in 6 CFR part 150. On the basis of an audit of Pester's pricing practices during the period November 1, 1973 through May 8, 1974 (the audit period), the ERA alleged that Pester had violated certain applicable DOE price regulations in its sales of refined petroleum products to end-users and two resellers. On September 12, 1980, the ERA issued a Proposed Remedial Order (PRO) (Case No. 730SO1236) to Pester which alleged overcharges totalling $590,887.55 in sales of diesel fuel and regular, premium and Super Bonus gasoline. Pester filed objections, and on February 11, 1985, the OHA issued a Decision and Order in which it remanded the PRO to the ERA with instructions to recompute or eliminate the amount of overcharges relating to Pester's Sales of Super Bonus gasoline. *Pester Derby Oil Co.*, 12 DOE

[1] The PODRA requires that the DOE determination of excess petroleum violation escrow funds to be used for indirect restitution be made within 45 days after the beginning of each fiscal year. 15 U.S.C. 4502(c). The Green remedial order fund will be listed in the OHA determination that is to be made within 45 days after the beginning of fiscal year 1991 on October 1, 1990.

¶ 83,029 (1985) (*Pester I*). On August 13, 1985, the ERA issued a Revised Proposed Remedial Order (RPRO) in which it elected to eliminate the alleged overcharges relating to sales of Super Bonus and premium gasoline, producing a revised total overcharge amount of $271,595.60 plus interest. 50 FR 37726 (September 17, 1985).[1]

Prior to the issuance of the RPRO, Pester had filed for bankruptcy under chapter 11 of the U.S. Bankruptcy Code. Pester Marketing Company, Bankruptcy Case No. 85–339–C, (S.D. Iowa filed February 25, 1985). In the bankruptcy proceeding, the DOE submitted a Proof of Claim to the court based on the RPRO in the amount of $706,852.67, which included interest on the overcharge figure. On June 2, 1986, the United States Bankruptcy Court for the Southern District of Iowa (Central Division) approved an agreement between Pester and the DOE under which the DOE's claim was limited to $465,000 in full settlement of the remedial order proceeding. The actual amount that the DOE received under the Pester reorganization plan, however, was $287,993.71. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the Pester settlement fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute this fund. Comments are solicited.

III. Proposed Refund Procedures

Our experience with subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers who may have been injured by Pester's pricing practices during the November 1, 1973–May 8, 1974 audit period.[2] If any funds remain after all meritorious first-stage claims have been paid, they will be distributed in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986, Public Law No. 99–509, Title III, *reprinted in* Fed. Energy Guidelines ¶¶ 11,700–11,709 (PODRA).

A. Eligibility for Refunds

In order to be eligible for a refund, an applicant generally must establish that it was injured as a result of Pester's overcharges. *See* 10 CFR 205.280. As previously stated, Pester sold petroleum products to retail and wholesale customers. Therefore, we expect that claimants will fall into one of two general categories: (i) firms that resold Pester petroleum products [3] or (ii) individuals or firms that consumed Pester petroleum products for their own use (end-users). We propose to accept refund applications from these categories to customers.

We propose, however, to exclude from refund consideration certain sales of refined petroleum products made by Pester during the audit period. In the RPRO, the ERA eliminated the overcharges relating to sales of Super Bonus and premium gasoline. Only purchasers of regular gasoline and diesel fuel will therefore be eligible for a refund from the Pester settlement fund. In addition, on November 9, 1983, the ERA moved to amend the PRO to eliminate overcharges relating to Pester's retail sales at Station No. 69 located in Bettendorf, Iowa, and Station No. 812 located in Shenandoah, Iowa. Accordingly, refund claims based on purchases from these stations will not be eligible for a refund in this proceeding.

1. Showing of Injury

Claimants who resold Pester regular gasoline or diesel fuel and who do not accept the small claims presumption described below, will be required to make a detailed showing that they were injured by Pester's alleged overcharges. This showing will generally consist of two distinct elements. First, a reseller claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[4] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See Vickers Energy Corp./Hutchens Oil Co.*, 11 DOE ¶ 85,070 at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from Pester. *See National Helium Co./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985).

2. Small Claims Presumption

We propose to adopt a presumption that a firm which resold Pester products and requests a small refund was injured by the alleged regulatory violations. Under the small claims presumption, a reseller seeking a refund of $5,000 or less will not be required to submit evidence of injury beyond documentation of the volume of eligible Pester products that it purchased during the audit period. *See Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984) (*TOGCO*). As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, the expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could therefore deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large

[1] On May 8, 1986, the OHA issued a Decision and Order in which it remanded the RPRO to the ERA with instructions to explain how it determined the amounts of non-product cost increases attributable to Pester's sales of regular gasoline and diesel fuel. *Pester Derby Oil Co.*, 14 DOE ¶ 83,022 (1986).

[2] The agreement approved by the Bankruptcy Court expressly settles only OHA Case No. BRO–1329, the enforcement proceeding commenced by the PRO issued to Pester on September 12, 1980. Accordingly, only transactions covered by that enforcement proceeding will be considered in this refund proceeding.

[3] According to the ERA audit, only two resellers were allegedly overcharged by Pester, K–G Oil and Schaefer Oil Co. These firms and any other resellers or retailers that purchased from Pester during the audit period are eligible to apply for refunds.

[4] Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant may not receive a refund for any month in which it has a negative cumulative bank (for that product) or for any preceding month. *See Standard Oil (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to allow approximations of those banks prepared by the applicant. *Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85,187 (1986).

number of routine refund claims expected in an efficient manner.[5]

3. End-Users

In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of Pester regular gasoline or diesel fuel whose business is unrelated to the petroleum industry was injured by the alleged overcharges. *See, e.g., TOGCO* at 88,209. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* We therefore propose that end-users of Pester regular gasoline and diesel fuel need only document their purchase volumes from Pester during the audit period to make a sufficient showing that they were injured by the alleged overcharges.

4. Spot Purchasers

We also propose to adopt a rebuttable presumption that resellers which made only spot purchases from Pester did not suffer injury as a result of those purchases. Spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot market purchases of Pester products at increased prices unless they were able to pass through the full amount of the overcharges to their own customers. *See e.g Vickers,* 8 DOE at 85,396–97. Accordingly, any reseller claimant who was a spot purchaser must submit specific and detailed evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of its spot purchase(s) from Pester.[6]

B. Calculation of Refund Amounts

In order to determine the potential refund amounts for applicants in this proceeding, we propose to adopt a volumetric refund presumption. The volumetric refund presumption treats Pester's alleged overcharges as if they were dispersed equally in all of Pester's sales or regular gasoline and diesel fuel during the audit period. In accordance with this presumption, refunds are made on a pro-rate or volumetric basis.[7] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining is prices.

Under the volumetric approach, a claimant that adequately demonstrates its purchase volumes will be eligible to receive a refund equal to the number of gallons of eligible product that it purchased from Pester during the audit period times the per gallon refund amount. In the present case, the per gallon refund amount is $0.01134. We computed this figure by dividing the $287,993.71 received from Pester by the 25,395,967 gallons of regular gasoline and diesel fuel which Pester sold during the audit period. In addition, each successful claimant will receive a proportionate share of the interest that has accrued in the Pester escrow account.

As in previous cases, we propose to establish a minimum refund amount of $15.00.[8] We have found through our experience that the cost of processing claims in which refunds for amounts less than $15.00 are sought outweighs the benefits of restitution in those instances. *See Exxon Corp.,* 17 DOE ¶ 85,590 at 89,150 (1988). *See also* 10 CFR 205.286(b).

IV. Distribution of Funds Remaining after First Stage

As indicated above, we propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of PODRA. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Pester escrow account that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

V. Applications for Refund

Applications for refund should not be filed at this time. Detailed procedures for filing Applications will be provided in a final Decision and Order. Before disposing of any of the funds received from Pester, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the **Federal Register.**

It is therefore ordered That; The payments remitted to the Department of Energy by Pester Marketing Company pursuant to an Order of the United States Bankruptcy Court for the Southern District of Iowa on June 1986, will be distributed in accordance with the foregoing Decision.

[FR Doc. 90–15595 Filed 7–3–90; 8:45 am]
BILLING CODE 6450–01–M

[5] Under the volumetric refund presumption proposed in Part III B, a reseller must have purchased less than 440,917 gallons of Pester regular gasoline and diesel fuel during the audit period in order to qualify for a refund under the small claims presumption. A reseller whose purchase volumes exceed this amount may limit its refund claim to $5,000.

[6] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped through the draw down of banked costs. *See Quaker State Oil Refining Corp./ Certified Gasoline Co.,* 14 DOE ¶ 85,465 (1986).

[7] The volumetric refund presumption is rebuttable. Because we realize that the impact on an individual claimant may have been greater than the volumetric refund amount, a claimant may submit evidence detailing the specific overcharges that it incurred in order to be eligible for a large refund. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service,* 12 DOE ¶ 85,015 (1984).

[8] Under the volumetric method we have proposed in this proceeding, we calculate that an applicant must have purchased at least 1,323 gallons of regular gasoline or diesel fuel from Pester during the six-month audit period in order to qualify for the minimum $15 refund. We anticipate that although many individual motorists who purchased products at Pester's retail outlets may have legitimate claims, most of those claims will fall below the $15 threshold. However, it is possible that there are governmental entities or businesses with multiple vehicles that purchased regular gasoline or diesel fuel from Pester on a regular basis and in sufficient quantities to qualify for a refund.

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3805–3]

Open Meeting of the Negotiated Rulemaking Advisory Committee; Fugitive Emissions From Equipment Leaks Rule

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice that the next meeting of the Advisory Committee to negotiate a rule to control fugitive emissions of toxic chemicals from equipment leaks will be held on July 17 from 10 a.m. to 6 p.m., and on July 18, 1990 from 9 a.m. to 5 p.m., at the

Meredith Suites at the Park, 300 Meredith Drive, Durham, NC 27713; (919) 361–1234. The Meredith Suites is off Exit 278 on I–40.

The Committee reached agreement on the conceptual framework of the fugitive emissions from equipment leaks rule at the June 1990 meeting. The purpose of the July meeting is to review regulatory language drafted to reflect the consensus and implement the agreement.

The meeting is open to the public without advance registration. Persons needing further information on substantive aspects of the rule should call Robert Ajax, Office of Air Quality Planning and Standards, U.S. EPA, (919) 541–5579. Persons needing further information on committee arrangements or procedures should contact the Committee's facilitator, Philip Harter, (202) 887–1033.

Dated: June 26, 1990.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy, Planning and Evaluation.

[FR Doc. 90–15456 Filed 7–3–90; 8:45 am]

BILLING CODE 6560–50–M

[OPP-00291; FRL–3774–1]

State FIFRA Issues Research and Evaluation Group (SFIREG) Full Committee Meeting and Meeting of the SFIREG Working Committee on Ground Water Protection and Pesticide Disposal; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 1-day meeting of the SFIREG Working Committee on Ground Water Protection and Pesticide Disposal. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG will meet on Monday, July 9, 1990, from 8:30 a.m. to 5 p.m. and on Tuesday, July 10, 1990, beginning at 8:30 a.m. and adjourning at approximately noon. The SFIREG Working Committee on Ground Water Protection and Pesticide Disposal will meet on Wednesday, July 11, 1990, beginning at 8:30 a.m. and adjourning at approximately 3:30 p.m.

ADDRESSES: The meetings will be held at: The Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 486–1234.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128–D, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–7410.

SUPPLEMENTARY INFORMATION: The agenda of the SFIREG includes the following topics:

1. Regional reports.
2. Reports from the SFIREG Working Committees.
3. Proposed SFIREG statement of function, roles and responsibilities.
4. Information regarding the Spray Drift Task Force.
5. Transgenic plants.
6. Exports.
7. Other topics as appropriate.

The agenda of the Working Committee on Ground Water Protection and Pesticide Disposal includes the following topics:

1. Status of National Survey.
2. Status and update on Pesticides in Ground Water Strategy and supporting guidance documents.
3. Update on disposal related regulations.
4. Presentation by Illinois Department of Agriculture's containment project.
5. Other topics as appropriate.

Dated: June 29, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90–15703 Filed 7–3–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3192–4]

Nichro Plating Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at Nichro Plating Site, Louisville, Kentucky with Southern Railway Company. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365, 404–347–5059.

Written comments may be submitted to the person above by 30 days from the date of publication.

Dated: June 18, 1990.

Javier Garcia,

Acting Director, Waste Management Division.

[FR Doc. 90–15457 Filed 7–3–90; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59891; FRL 3774–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 13 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 90–225, 90–226, June 20, 1990.
Y 90–227, 90–228, June 19, 1990.
Y 90–229, 90–230, 90–231, June 24, 1990.
Y 90–232, 90–233, June 27, 1990.
Y 90–234, 90–235, July 4, 1990.
Y 90–236, 90–237, July 8, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–545, 401 M Street, SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential

document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 90–225

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Used in the plastic and textile industry. Prod. range: Confidential.

Y 90–226

Manufacturer. Freeman Polymers Division.
Chemical. (G) Acrylic alkyd copolymers.
Use/Production. (S) High solids air dry enamel for industrial applications. Prod. range: 30,500–48,000 kg/yr.

Y 90–227

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (S) Coating for open, nondispersive use in original equipment manufacture. Prod. range: 300,000–600,000 kg/yr.

Y 90–228

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (S) Coating for open, nondispersive use in original equipment manufacture. Prod. range: 300,000–600,000 kg/yr.

Y 90–229

Manufacturer. Eastman Kodak Company.
Chemical. (G) Polymer of styrene, alkyl acrylate, sulfoalkyl acrylate and potassium persulfate reacted with sodium hydroxide.
Use/Production. (G) Contained use in an article. Prod. range: 64,000–70,000 kg/yr.

Y 90–230

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Modified olefin-based polymer.
Use/Production. (G) Textile and paper treating chemical. Prod. range: Confidential.

Y 90–231

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Modified olefin-based polymer.
Use/Production. (G) Textile and paper treating chemical. Prod. range: Confidential.

Y 90–232

Manufacturer. Cook Corporation.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Polymer for coil coating. Prod. range: 100,000–250,000 kg/yr.

Y 90–233

Manufacturer. Confidential.
Chemical. (S) Neopentyl glycol; phthalic anhydride isophthalic acid; terephthalic acid.
Use/Production. (S) Polymer for coil coating. Prod. range: 100,000–250,000 kg/yr.

Y 90–234

Importer. Takeda U.S.A., Inc.
Chemical. (G) Hybrid polymer of unsaturated polyester and vinyl ester.
Use/Import. (S) Matrix of sheet molding compound (SMC). Import range: 100,000–120,000 kg/yr.

Y 90–235

Manufacturer. Confidential.
Chemical. (G) Polyester urethane.
Use/Production. (G) Used in coatings applied by industrial manufactures. Prod. range: Confidential.

Y 90–236

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Pultrusion resin corrosion-resistant application. Prod. range: Confidential.

Y 90–237

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Pultrusion resin corrosion-resistant application. Prod. range: Confidential.

Dated: June 28, 1990.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90–15602 Filed 7–3–90; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–868–DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–868–DR), dated May 26, 1990, and related determinations.

DATES: June 20, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Iowa, dated May 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 26, 1990: The counties of Johnson, Linn, Muscatine, Polk, and Scott for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–15607 Filed 7–3–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–868–DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–868–DR), dated May 26, 1990, and related determinations.

DATES: June 23, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Iowa, dated May 26, 1990, is hereby amended to include the following areas among those areas determined to have adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 26, 1990: The counties of Louisa, Madison, Tama, and Webster for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–15608 Filed 7–3–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-871-DR]

Notice of Major Disaster and Related Determinations; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–871–DR), dated June 22, 1990, and related determinations.

DATES: June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra E. Dixon, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–4066.

NOTICE: Notice is hereby given that, in a letter dated June 22, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms, tornadoes, and flooding beginning on May 15, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individuals Assistance. Should Public Assistance later be warranted, consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Phil Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

The counties of Edwards, Jasper, Marion, Shelby, Wabash, Wayne, and White.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90–15527 Filed 7–3–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-869-DR]

Amendment to Notice of a Major Disaster Declaration; Indiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–869–DR), dated June 4, 1990, and related determinations.

DATED: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Indiana, dated June 4, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 4, 1990.

Putnam County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–15524 Filed 7–3–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-868-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–868–DR), dated May 26, 1990, and related determinations.

DATED: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Iowa, dated May 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 26, 1990:

The counties of Carroll, Cedar, Clinton, Dallas, Jasper, Jones, Shelby, Story and Warren for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–15523 Filed 7–3–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–870–DR), dated June 6, 1990, and related determinations.

DATED: June 23, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The counties of Morrow and Richland for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–15525 Filed 7–3–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATED: June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

Madison County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15526 Filed 7-3-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Citizens National Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 25, 1990.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Citizens National Bancorp, Inc., Putnam, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank, Putnam, Connecticut.

B. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. United Bank Corporation of New York, Downsville, New York; to acquire 5.96 percent of the voting shares of The Citizens National Bank of Hammond, Hammond, New York.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. HomeTown Bancorp, Inc., Myersville, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Myersville Bank, Myersville, Maryland.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Southern Colorado Bancshares, Inc., Pueblo West, Colorado; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Southern Colorado, Pueblo West, Colorado.

E. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Fort Wayne National Corporation, Fort Wayne, Indiana, to acquire 100 percent of the voting shares of TrustCorp Bank—Huntington, N.A., Huntington, Indiana.

2. Heartland Bankshares, Inc. Madrid, Iowa, to become a bank holding company by acquiring 100 percent of the voting shares of City State Bank, Madrid, Iowa.

3. INB Financial Corporation, Indianapolis, Indiana, to acquire 100 percent of the voting shares of The Peoples Savings Bank of Evansville, Evansville, Indiana.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Overton Bancorporation, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Overton Park National Bank, Fort Worth, Texas, and First National Bank Mansfield, Mansfield, Texas.

G. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Community Bancorporation, Pullman, Washington; to acquire 100 percent of the voting shares of Farmers State Bank, Uniontown, Washington.

Board of Governors of the Federal Reserve System, June 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15476 Filed 7-3-90; 8:45 am]

BILLING CODE 6210-01-M

First Republic Bancshares, Inc., Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 18, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Rubin Lawrence Walters, Rayville, Louisiana to acquire an additional .04 percent for a total of 15.77 percent, of the voting shares of First Republic Bancshares, Inc., Rayville, Louisiana, and thereby indirectly acquire First Republic Bank, Rayville, Louisiana.

Board of Governors of the Federal Reserve System, June 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15477 Filed 7-3-90; 8:45 am]

BILLING CODE 6210-01-M

Fort Wayne National Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompained by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Fort Wayne National Corporation, Fort Wayne, Indiana to acquire Fort Wayne National Life Insurance Company, Fort Wayne, Indiana, and thereby act as principal reinsurer with respect to life and disability insurance policies issued solely for the purposes of insuring repayment of outstanding balances due on extensions of credit initiated by the banking subsidiaries for Fort Wayne National Corporation pursuant to § 225.25(b)(8)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15478 Filed 7-3-90; 8:45 am]

BILLING CODE 6210-01-M

Societe Generale Paris, France; Application To Act as a Registered Options Trade in Foreign Currency Options Traded on the Philadelphia Stock Exchange

Societe Generale, Paris, France, ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act"), and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its wholly owned United States subsidiary, Societe Generale Options-North America, Philadelphia, Pennsylvania, ("Company"), to engage *de novo* in the activity of dealing as a registered options trader in options in the Deutsche mark traded on the Philadelphia Stock Exchange (the "Exchange") during the Exchange's evening trading session. Applicant has also applied to engage *de novo* in the activity of dealing as a registered options trader in options on the Japanese yen, Swiss franc, British pound, Canadian dollar, Australian dollar, and European Currency Unit traded on the Exchange during the Exchange's day and evening trading session. Applicant states that the role of a registered options trader is to make a market in options on foreign currency. Registered options traders offer to purchase and sell foreign currency options for their own accounts in order to maintain price continuity in the foreign currency options. Registered options traders generate revenue from the spreads between their bid and offer prices. The Company would conduct the proposed activities on a worldwide basis.

The Board has not previously determined that the proposed activities are permissible under section 4(c)(8) of the BHC Act. Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or management or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors,* 516 F.2d 1229, 1337 (D.C. Cir. 1975) ("*National Courier*"). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. "Board Statement Regarding Regulation Y," 49 **Federal Register** 806 (1984). Applicant contends that functioning as a registered options trader in foreign currency options is functionally and operationally equivalent to the foreign exchange activities in which banks extensively engage. Applicant also states that national banks have been authorized to act as registered options traders in foreign currency options traded on the Philadelphia Stock Exchange. In addition, Applicant notes that the Board has approved an application to act as a specialist in options on Deutsche mark options traded on the Exchange. *Societe Generale,* 75 Federal Reserve Bulletin 580 (1989).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Applicant contends that the proposed activities would result in public benefits by facilitating the development of the foreign exchange options market by providing increased market liquidity and enhanced opportunities for financial institutions to hedge foreign exchange risk. Applicant maintains that the risks associated with the proposal are not significant because the activity is not predominantly speculative, and would be conducted on a carefully hedged basis in a closely regulated environment.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standard of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by Williams W. Wiles,

Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 23, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 28, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15479 Filed 7-3-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. C-3290]

Gerald S. Friedman, M.D., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the California physician and his dialysis centers from: requiring physicians to use his in-patient dialysis service for their patients as a condition for using respondents' out-patient dialysis facilities; barring physicians who want to treat their patients at respondent's out-patient dialysis facilities from owning or operating a competing in-patient dialysis service; and denying, revoking, suspending, or otherwise impairing a physician's staff privileges at one of respondent's out-patient dialysis facilities because the physician has used or operated an in-patient dialysis service other than one owned by respondents. In addition, the consent order requires that respondents distribute a copy of the order and complaint to each physician with privileges at any of the dialysis facilities.

DATES: Complaint and Order issued June 18, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Garry Gibbs, FTC/S-3115, Washington, DC 20580. (202) 326-2767.

SUPPLEMENTARY INFORMATION: On Friday, March 30, 1990, there was published in the **Federal Register**, 55 FR 12016, a proposed consent agreement with analysis In the Matter of Gerald S. Friedman, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 90-15491 Filed 7-3-90; 8:45 am.]

BILLING CODE 6750-01-M

[File No. 901 0096]

Reckitt & Colman plc; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would allow, among other things, a London, England corporation to acquire the Boyle-Midway Division of American Home Products Corp., but would require respondent to divest its own rug-cleaning products business to a Commission-approved acquirer within eight months after the consent order becomes final. In addition, for ten years, respondent would be required to obtain prior Commission approval before acquiring any interest in any company that manufacturers or sells rug cleaning products in the U.S.

DATES: Comments must be received on or before September 4, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Deborah K. Owen.

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Reckitt & Colman plc ("R&C") of the domestic consumer household products business of American Home Products Corporation ("AHP") by purchasing all the stock of several wholly-owned United States subsidiaries of AHP constituting AHP's Boyle-Midway division (Boyle-Midway, Inc., Boyle-Midway Household Products, Inc., Boyle Midway Subsidiary Corporation, and Boyle-Midway Puerto Rico, Inc.) and it now appearing that R&C is willing to enter into an Agreement Containing Consent Order ("Consent Order") to divest certain assets and cease and desist from certain acts,

It is hereby agreed by and between R&C, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed respondent R&C is a corporation organized, existing, and doing business under and by virtue of the laws of England, with its office and principal place of business at One Burlington Lane, London 4W 2RW, England. R&C does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its office and principal place of business at 1655 Valley Road, Wayne, New Jersey 07474-0943.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of Complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Consent Order shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Order is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Order and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Consent Order is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of Complaint here attached.

6. This Consent Order contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this Consent Order shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Agreement or the Consent Order may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

A. *R&C* means Reckitt & Colman plc, a corporation organized, existing, and doing business under and by virtue of the laws of England, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures. The words "subsidiary", "affiliate" and "joint venture" refer to any firm in which there is partial (10 percent or more) or total ownership of control between corporations.

B. *AHP* means American Home Products Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

C. *Boyle* means the Boyle-Midway Division, which includes four corporations, all directly or indirectly, wholly-owned by AHP: Boyle-Midway, Inc. and Boyle-Midway Household Products, Inc., both of which are Delaware corporations, and Boyle-Midway Subsidiary Corporation, a Nevada corporation, all with their principal offices at 685 Third Avenue, New York, N.Y. 10017; and Boyle-Midway Puerto Rico, Inc., a Puerto Rico coroporation, with its address at G.P.O. Box 70115, San Juan, Puerto Rico.

D. *Commission* means the Federal Trade Commission.

E. *Acquisition* means the acquisition by R&C of Boyle from AHP.

F. *Acquirer* means the party or parties to whom R&C divests the assets herein ordered to be divested.

G. *R&C's rug cleaning products* means R&C's rug cleaning products, Spray 'n Vac, Apply 'n Vac and Spray 'n Brush, which are applied by aerosol or pump spray or in liquid form and which are sold primarily in grocery and general merchandise stores.

H. *R&C's rug cleaning products business* means the business of manufacturing, marketing, and selling R&C's rug cleaning products.

I. *R&C's Assets to be Divested* means the following assets constituting or otherwise related to R&C's rug cleaning products business:

(1) The R&C product line Profit and Loss Statements for 1987, 1988, 1989, and 1990 relating to each of R&C's rug cleaning products;

(2) All trademarks (including, without limitation, Glamorene, Spray 'n Vac, Apply 'n Vac and Spray 'n Brush) relating to R&C's rug cleaning products, except that R&C may require the Acquirer to grant to R&C a license, for a reasonable royalty, for a period of not longer than three (3) years, to sell household products other than rug cleaning products under the Glamorene trademark;

(3) A list of stock keeping units ("SKUs"), i.e., all forms, package sizes and other units in which each R&C rug cleaning product is sold and which are used in records of sales and inventories.

(4) A Bill of Materials for each R&C rug cleaning product, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including lists of authorized sources for materials and components;

(5) All art work and mechanical drawings currently in use relating to the R&C rug cleaning product;

(6) All dedicated molds and equipment currently in use for R&C's rug cleaning products;

(7) A list of all customers who have bought R&C's rug cleaning products from 1989 to the present, including the most recent file of names, addresses, and telephone numbers of the individual

customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

(8) All currently available marketing information in the possession of R&C relating to R&C's rug cleaning product and the rug cleaning business generally, including but not limited to R&C's consumer and trade promotional programs for 1987, 1988, 1989, and 1990, and any existing plans for 1991, provided, however that marketing information relating to Woolite obtained by R&C after the acquisition shall not be provided to the Acquirer;

(9) All inventories of finished goods, packaging, and unique raw materials relating to R&C's rug cleaning products;

(10) All names of manufacturers under contact with R&C to produce R&C's rug cleaning products from 1988 to the present;

(11) All product testing and laboratory research data from January 1, 1987 until the Assets to be Divested are divested pursuant to this Order relating to R&C's rug cleaning products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

(12) All consumer correspoondence and related documents from January 1, 1987 until the Assets to be Divested are divested pursuant to this Order relating to R&C rug cleaning products business;

(13) All price lists for R&C's rug cleaning products from January 1, 1987 to the present;

(14) All information from January 1, 1987 until the Assets to be Divested are divested pursuant to this Order relating to costs of production for each of R&C's rug cleaning products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

(15) All sales data relating to R&C's rug cleaning products, from 1987 until the Assets to be Divested are divested pursuant to this Order;

(16) All assignable agreements relating to Good Housekeeping Approvals for R&C's rug cleaning products.

J. *Woolite's rug cleaning products* means Woolite's home rug cleaning products, Woolite Deep Cleaning Carpet Cleaner, Woolite Self Cleaning Carpet Cleaner, Woolite Spot & Stain Remover and Woolite Upholstery Cleaner, which are applied by aerosol or pump spray or in liquid form and which are sold primarily in grocery and general merchandise stores.

K. *Woolite's rug cleaning products business* means the business of manufacturing, marketing, and selling Woolite's rug cleaning products.

L. *Woolite's Assets to be Divested* means the following assets constituting or otherwise related to Woolite's rug cleaning products business:

(1) The Woolite product line Profit and Loss Statements for 1987, 1988, 1989, and 1990 relating to each of R&C's rug cleaning products;

(2) A royalty-free license to use the Woolite trademarks for all Woolite rug cleaning products;

(3) A list of stock keeping units ("SKUs"), i.e., all forms, package sizes and other units in which each Woolite rug cleaning product is sold and which are used in records of sales and inventories;

(4) A Bill of Materials for each Woolite rug cleaning product, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including lists of authorized sources for materials and components;

(5) All artwork and mechanical drawings currently in use relating to the Woolite rug cleaning products;

(6) All dedicated molds and equipment currently in use for Woolite's rug cleaning products;

(7) A list of all customers who have bought Woolite's rug cleaning products from 1989 to the present, including the most recent file of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

(8) All currently available marketing information in the possession of R&C relating to Woolite's rug cleaning products and the rug cleaning business generally, including but not limited to Woolite consumer and trade promotional programs for 1987, 1988, 1989, and 1990, and any existing plans for 1991;

(9) All inventories of finished goods, packaging, and unique raw materials relating to Woolite rug cleaning products;

(10) All names of manufacturers under contract with Woolite to produce Woolite's rug cleaning products from 1988 to the present;

(11) All product testing and laboratory research data from January 1, 1987 until the Woolite Assets to be Divested are divested pursuant to this Order relating to Woolite's rug cleaning products, including but not limited to toxicity research data, all regulatory registrations and correspondence;

(12) All consumer correspondence and related documents from January 1, 1987 until the Woolite Assets to be Divested are divested pursuant to this Order relating to Woolite rug cleaning products business;

(13) All price lists for Woolite's rug cleaning products from January 1, 1987 to the present;

(14) All information from January 1, 1987 until the Woolite Assets to be Divested are divested pursuant to this Order relating to costs of production for each of Woolite's rug cleaning products, including but not limited to raw material costs, packaging costs, and advertising and promotional costs;

(15) All sales data relating to Woolite's rug cleaning products, from 1987 until the Woolite Assets to be Divested are divested pursuant to this Order;

(16) All assignable agreeements relating to Good Housekeeping Approvals for Woolite's rug cleaning products.

It is order, That:

A. R&C shall divest, absolutely and in good faith, within eight (8) months of the date this Order becomes final, the R&C Assets to be Divested.

B. R&C shall divest the R&C Assets to be Divested only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the R&C Assets to be Divested is to ensure the continuation of the R&C Assets to be Divested as an ongoing, viable enterprise and to remedy the lessoning of competition resulting from the proposed acquisition as alleged in the Commission's Complaint.

C. R&C shall comply with all terms of the Hold Separate Agreement, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as R&C has divested the R&C Assets to be Divested or until such time as R&C has divested the Woolite Assets to be Divested or until such other time as the Hold Separate Agreement provides.

D. R&C shall take such action as may be necessary to maintain the viability and marketability of the R&C and Woolite Assets to be Divested and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any of the R&C and Woolite Assets to be Divested except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketabiltiy of the Assets to be Divested.

III

It is further ordered, That:

A. If R&C has not divested, absolutely and in good faith and with the Commission's approval, the R&C Assets to be Divested within eight (8) months of the date this Order becomes final, and if an application for Commission approval of such divestiture is not pending before the Commission, R&C shall divest the Woolite Assets to be Divested within six (6) months thereafter only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. If R&C has not divested the Woolite Assets to be Divested within that subsequent six (6) month period, R&C shall consent to the appointment by the Commission of a trustee to divest the Woolite Assets to be Divested. Provided, however, that if the Commission has not approved or disapproved a proposed divestiture within 120 days of the date of the application for such divestiture has been put on the public record, the running of the divestiture period shall be tolled until the Commission approves or disapproves the divestiture. In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, R&C shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by R&C to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A of this Order, R&C shall consent to the following terms and conditions regarding the trustee's powers, duties, authorizes, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of R&C, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Woolite Assets to be Divested.

3. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission; provided, however, the Commission may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Woolite Assets to be Divested, or any other relevant information, as the trustee may reasonably request. R&C shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. R&C shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by R&C shall extent the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to R&C's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II.B of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each Acquirer for the divestiture of the Woolite Assets to be Divested. The divestiture shall be made in the manner set out in Paragraph II, provided, however, if the trustee receives bona fide offers from more than one Acquirer, and if the Commission determines to approve more than one such Acquirer, the trustee shall divest to the Acquirer selected by R&C from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of R&C, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of R&C, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of R&C and the trustee's power shall be terminated. The turstee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Woolite Assets to be Divested.

7. R&C shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, R&C shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

The trustee shall have no obligation or authority to operate or maintain the Woolite Assets to be Divested.

The trustee shall report in writing to R&C and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

It is further ordered That, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until R&C has fully complied with the provisions of Paragraphs II and III of this Order and with the Hold Separate Agreement, R&C shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. R&C shall include in its compliance reports, among other things that are required from time to time, a full description of the contacts or negotiations with respect to divestiture, including the identity of all parties contacted. R&C also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V

It is further ordered, That:

For a ten (10) year period commencing on the date this Order becomes final, R&C shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly

or indirectly, through subsidiaries, partnerships, or otherwise, any interest in, or the whole or any part of the stock or share capital of, any person or business that is engaged in the rug cleaning products business in the United States, or, except in the ordinary course of business, any assets used or previously used in (and still suitable for use in), the rug cleaning products business. One year from the date this Order becomes final and annually for nine years thereafter, R&C shall file with the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI

It is further ordered, That for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to R&C made to the principal office of R&C's United States subsidiary, Reckitt & Colman Inc., R&C shall permit any duly authorized representatives of the Federal Trade Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of R&C relating to any matters contained in this Order; and

B. Upon five days notice to R&C, made to Reckitt & Colman Inc., and without restraint or interference from R&C, to interview officers or employees of R&C, who may have counsel present, regarding such matters.

VII

It is further ordered, That R&C shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of the Order

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an Agreement containing a proposed Consent Order from Reckitt & Colman plc.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The proposed Complaint alleges that Reckitt & Colman would acquire a dominant position in the business of manufacturing, marketing, and selling home rug cleaning products (some of which can also be used to clean upholstery) applied by aerosol or pump spray by acquiring all of the voting securities of Boyle-Midway, consisting of four wholly-owned subsidiaries of American Home Products Corporation. It alleges also that the relevant geographic market is the United States and that this market is highly concentrated and that entry into this market is extremely difficult. It alleges that as a result of the acquisition competition between Reckitt & Colman and Boyle-Midway would be eliminated, that the acquisition would result in a highly concentrated relevant market, and that the likelihood of collusion in that market would be greatly increased.

The proposed Agreement and Order provides that Reckitt & Colman may acquire Boyle-Midway, but it must divest its rug cleaning products business to a third party, approved in advance by the Commission, within eight months, or else within six months thereafter divest the Woolite rug cleaning assets. If the Woolite rug cleaning assets are not divested within six months, the Commission will appoint a trustee to divest the Woolite rug cleaning assets. It also provides that for a period of ten years Reckitt & Colman may not acquire any interest in any other firm in the relevant market without prior approval from the Commission.

The anticipated competitive effect of the proposed Order will be to assure that competition will continue in the United States market for home rug cleaning products.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify in any way their terms.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 90-15492 Filed 7-3-90; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-654-NC]

RIN 0938-AE53

Medicare Program; Update of Ambulatory Surgical Center Payment Rates Effective July 1, 1990

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice implements section 1833(i)(2(A) of the Social Security Act, which requires that the payment rates for ambulatory surgical center services be reviewed and updated annually, and responds to public comments we received concerning the ambulatory surgical center payment rate update notice published on February 8, 1990 (55 FR 4577).

DATES: Effectuve Date: The rates contained in this notice are effective for services furnished on or after July 1, 1990.

Comment Date: To ensure consideration, comments must be received at the appropriate address, as provided below, no later than 5:00 p.m. on September 4, 1990.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-654-NC, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave,. SW., Washington, DC

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-654-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Joan H. Sanow (301) 966-5723.

SUPPLEMENTARY INFORMATION:.

I. Background

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include services furnished in connection with those surgical procedures that, under section 1833(i)(1)(A) of the Act, are specified by the Secretary and are performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (ASC) or in a hospital outpatient department. To qualify as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and 42 CFR 416.2.

Generally, there are two elements in the total charge for a surgical procedure—a charge for the physician's professional services for performing the procedure and a charge for the facility's services (for example, use of an operating room). Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate for facility services associated with covered surgical procedures. ASC facility services are subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, participating ASCs are paid 80 percent of the prospectively determined rate. This rate is intended to represent the Secretary's estimate of a fair payment that takes into account the cost of facility services provided in conjunction with a procedure. Currently, this rate is a standard overhead amount that does not include physicians' fees and other medical items and services (for example, durable medical equipment) for which separate payment may be authorized under other provisions of the Medicare program.

The Report of the Conference Committee accompanying section 934 of the Omnibus Reconcilitation Act of 1980 (Pub. L. 96–499) (the legislation that added the ASC benefit to the Medicare program) states, "This overhead factor is expected to be calcuated on a prospective basis * * * utilizing sample survey and similar techniques to develop reasonable estimated overhead allowances for each of the listed procedure * * *." (See H.R. Rep. No. 1479, 96th Cong., 2nd Sess. 134 (1980).) Section 416.140 of the regulations provides that a survey of ASCs participating in the program will be conducted periodically to collect data for analysis or re-evaluation of the payment rates. Such a survey will be conducted no more often than annually. In addition, section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate result in substantially lower Medicare expenditure than would have been paid if the same procedure was performed on an inpatient basis in a hospital.

Section 9343(b)(1) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) revised section 1833(i)(2) of the Act to require annual rather than periodic updating of ASC rates beginning no later than July 1, 1987.

Section 4063(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1833(i)(2)(A)(iii) of the Act to require that payment for an intraocular lens (IOL) inserted during or subsequent to cataract surgery performed in an ASC be included in the facility payment rate effective with services funished on or after July 1, 1988. Section 4063(b) of Pub. L. 100–203 also required that the payment amount for the IOL be reasonable and related to the cost of acquiring certain types of lenses.

On February 8, 1990, we published a final notice in the Federal Register (55 FR 4526) that set forth a revised methodology for determining the payment rates of ASC services furnished to beneficiaries under Part B of Medicare. The provisions of that final notice—

- Refined the methodology used to determine the payment rates;
- Based the payment rates on the most recent survey data collected from participating ASCs;
- Computed the payment rates using the HCFA hospital wage index;
- Incorporated a $200 payment for IOLs inserted during or subsequent to cataract surgery into the facility rate as required by section 4063(b) of Public Law 100–203;
- Established the payment policy for surgical procedures that are terminated due to medical complications; and
- Established eight payment groups. (Groups 6 and 8 contain only procedures related to the isnertion of IOLs).

The new ASC payment rate methodology and IOL allowance were effective March 12, 1990. However, the rates published at 55 FR 4526 were not implemented, but were superseded by rates contained in a separate notice with comment period that was also published in the Federal Register on February 8, 1990 (55 FR 4577). The provisions of that notice increased the ASC facility services payment rates for the eight groups by the estimated annual rate of increase (4.83 percent) in the consumer price index for urban consumers (CI–U) for calendar year 1989. The IOL allowance remained $200.

II. Discussion of Comments

In response to the February 8, 1990 ASC payment rate update notice with comment period (55 FR 4577), we received seven timely comments: one from an ASC, three from hospital administrative staff, one from a health-related professional association, and two from manufacturers of IOLs. A summary of these comments and our responses to them follow:

A. ASC Ratesetting Methodology and IOL Allowance

Comment: Most commenters claimed that both the IOL allowance and the methodology for setting ASC rates are inadequate.

Response: Commenters regarding the ASC ratesetting methodology and IOL allowance have already been addressed in the final notice (55 FR 4534) published on February 8, 1990, "Revision of Ambulatory Surgical Center Payment Rate Methodology"; consequently, they will not be repeated here.

Comment: Four commenters were critical of the method of determining payments to hospitals for ASC approved procedures performed in an outpatient setting (that is, the lowest of their aggregate cost, charges, or a blend of 50 percent of the applicable wage-adjusted ASC rate and 50 percent of the hospital-specific amount). Alternative approaches that the commenters believe would be more realistic and beneficial for hospitals than the existing methodology were suggested.

Response: The method of determining payments to hospitals for ASC approved procedures performed in an outpatient setting was legislated by Congress in section 9343(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). Therefore, modifications cannot be made without appropriate statutory authorization.

Comment: One commenter recommended that payment for procedures lacking adequate data upon which to base a payment classification be made at cost rather than being assigned to a payment group based on clinical judgment.

Response: Section 1833(i)(2)(A) of the Act authorizes the Secretary to pay ASCs a prospectively determined rate that represents the Secretary's estimate of a fair fee that takes into account the costs incurred generally by ASCs in providing faciltiy services in conjunction with covered procedures. Therefore, a per-procedure cost payment system does not conform with section 1833(i)(2)(A) of the Act which allows a prospectively determined rate.

Comment: One commenter asked why sigmoidoscopy procedures with CPT–4 codes 45336 and 45337 were not included in the list of ASC approved procedures since related sigmoidoscopy procedures with CPT–4 codes 45331, 45333, and 45334 were included. The same commenter asked into which payment group CPT–4 code 55383 should be placed.

Response: A code revision in the 1988 CPT–4 directed that codes 45330–45337 be used to report several colonoscopy procedures, the prior codes for which (45360–45372) were being deleted. This change affected ASC approved codes 45360, 45365, 45367, 45368, and 45370. Sigmoidoscopy procedure codes 45331 (biopsy), 45333 (removal of polypoid lesion), and 45334 (control of hemorrhage) met threshold criteria and were added to the list of ASC approved procedures to replace codes 45365, 45370, and 45368 respectively. As a result of the 1988 CPT–4 code change, code 45336, sigmoidoscopy for ablation of tumor or lesion, replaced code 45369, colonoscopy for ablation of turmor or lesion. Because code 45369 was never on the ASC approved list, code 45336 was not added to the list. Code 45337, sigmoidoscopy for decompression of volvulus, appeared as a code for the first time in CPT–4 in 1988 and it had no colonoscopic correlative affected by the 1988 CPT–4 code revision explained above. We are in the process of gathering data to determine if these are appropriate procedures to propose as additions to the list of ASC-approved procedures.

The payment group for code 45383 was inadvertently omitted from the notice published on February 8, 1990 in the **Federal Register** (55 FR 4561). Carriers have been advised that the payment group for code 45383 is group 2, effective for services beginning March 12, 1990.

B. Automatic CPI–U Annual Update

Comment: One commenter recommended that we establish a rule to update ASC rates automatically every year on July 1 by the consumer price index for urban consumers (CPI–U) unless the payment methodology or the basis for the updates are altered in some manner that would require publication of a notice of proposed rulemaking.

Response: An automatic annual increase using the CPI–U does not conform with the requirement in section 1822(i)(2)(A) of the Act that the Secretary annually review and update the payment amounts for ASC facility services. Simply applying an inflation adjustment to the rates each year may mask economies of scale achieved by ASCs due to a greater number of procedures performed or specialization in a single procedure or group of procedures.

C. IOL Allowance Update

Comment: Three commenters protested that our making the 4.88 percent update adjustment prior to blending the IOL allowance into the facility rate for groups 6 and 8 was without legal or methodological basis, and penalizes those facilities which perform a large percentage of cataract procedures that involve the use of an IOL.

Response: We have no evidence that the price of IOLs increased during this period. We do have information that IOLs were and are being acquired for considerably less than $200. In the absence of any evidence to the contrary, the $200 allowance was, in our estimation, reasonable and related to the cost of acquiring an IOL at that time.

III. Provisions of this Notice

A. Updated Rates

We are updating the ASC facility rates published in the **Federal Register** (55 FR 4578) on February 8, 1990. The revised payment rates set forth below reflect the estimated annual rate of increase in the CPI–U for calendar year 1990. The CPI-U is a generalized index reflecting increases in the prices paid for a representative market basket of goods and services. We used this index to update the ASC facility rates in two notices, one for services furnished on or after July 1, 1987 and another for services furnished on or after March 12, 1990. The estimated annual percentage of change for calendar year 1990 is 4.21 percent and reflects changes in the CPI–U for 1990 based on forecasts by Data Resources, Incorproated.

The updated rates were determined by multiplying the eight ASC payment amounts published in the **Federal Register** (55 FR 4578) on February 8, 1990 by an inflation factor of 4.21 percent. For Groups 6 and 8, which also include a $200 allowance for IOLs, the inflation adjustment was made prior to blending the IOL allowance into the facility rate. (As discussed in detail in the February 8, 1990 ASC final notice that set forth the rate-setting methodology (at 55 FR 4533), our information indicates that IOLs can be purchased for considerably less than the $200 allowance.

Additional cost data and other applicable data will be collected for use in determining future ASC rate updates that will be announced in the **Federal Register** using notice and comment procedures. We would not expect to use the CPI–U as the sole basis for annual updates. Simply applying an inflation adjustment to the rates each year may mask economies of scale achieved by ASCs due to a greater number of procedures performed or specialization in a single procedure or group of procedures. Data will be collected by type of ASC (for example, cataract specialty centers). In the future, we will consider differential rate setting for cataract specialty ASCs, which account for a large share of total ASC payments, if their cost structures are different from multi-procedure ASCs.

The updated ASC facility services payment rates for services furnished on or after July 1, 1990 are as follows:

Group 1—$271
Group 2—$363
Group 3—$417
Group 4—$513
Group 5—$585
Group 6—$752 (552 + 200)
Group 7—$812
Group 8—$871 (671 + 200)

B. Wage Index Changes

The ASC payment rate methodology published in the **Federal Register** on February 8, 1990 describes how, after adjusting the procedure charges for inflation, we deflated the procedure charges by the HCFA hospital wage index applicable to the ASC's location to remove any variation in ASC procedure charges that may be due solely to geographical differences in wages (55 FR 4529). A standardized labor-related portion of the charge, adjusted for geographic variation, was thereby derived. In order to calculate an individual ASC's payment rate, the wage factor that was neutralized in determining the overall group rate is restored (see examples below).

Example 1:

The following is an example of how the payment is determined for a procedure in Group 4 ($513) for an ASC located in Detroit, Michigan. The appropriate hospital wage index value is 1.0784. The labor-related portion is 34.45 percent and the nonlabor-related portion is 65.55 percent.

Wage Adjusted Rate

$=[(\$513 \times .3445) \times 1.0784] + (\$513 \times .6555)$
$=(\$176.73 \times 1.0784) + \$336.27$
$=\$190.58 + \$336.27$
$=\$526.85$

The steps set forth in this example are used for calculating payment rates for Groups 1 through 5 and Group 7, the groups whose payment rates do not include an allowance for IOLs.

Example 2:

The following is an example of how payment is determined for the two procedures in Group 8 ($871) performed in an ASC located in Detroit, Michigan. The steps set forth in this example are also used in calculating the payment amount for the one procedure in Group 6.

Since the IOL allowance is not subject to the labor adjustment, the $200 allowance must be subtracted from the composite payment rate ($871) before adjusting for labor variation.

Wage Adjusted Rate

=[($871−$200) × .3455 × 1.0784] + [($871−$200) × .6555]
=[($671 × .3445) × 1.0784] + ($671 × .6555)
=($231.16 × 1.0784) + $439.84
=$249.28 + $439.84
=$689.12

Composite Adjusted Rate

=$689.12 + $200
=$889.12

The wage index adopted both for calculating ASC payment rates in the February 8, 1990 notice (55 FR 4572), effective for services furnished on or after March 12, 1990, and for determining the payment amount for individual ASC claims is the updated index published in the September 1, 1989 hospital prospective payment final rule (54 FR 36452). That is, the wage index values for urban areas, rural areas, and rural counties whose hospitals are deemed urban were all published in the **Federal Register** on February 8, 1990 as Addendum B (55 FR 4572) to the notice revising the ASC payment rate methodology. Included in the index for rural counties whose hopsitals are deemed urban were eight counties in which there are no prospective payment hospitals. In these cases, we applied the wage index value of an adjacent urban area for the purpose of calculating the ASC facility payment rates only. These counties are as follows:

- Owen, IN in the Bloomington, IN MSA.
- Cass, NE in the Omaha, NE MSA.
- Caswell, NC in the Danville, VA MSA.
- Currituck, NC in the Norfolk-Virginia Beach-Newport News, VA MSA.
- Preble, OH in the Dayton-Springfield, OH MSA.
- Isle of Wight, Va in the Norfolk-Virginia Beach-Newport News, VA MSA.
- Spotsylvania, VA in the Washington, DC-MD-VA MSA.
- Lincoln, WV in the Charleston, WV MSA.

In order to address the adverse impact on certain redesignated hospitals that resulted from the implementation of section 8403(a) of Public Law 100–647, Congress, in section 6003(h)(3) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), revised the methodology for applying the HCFA wage index to hosptals that had been adversely affected by section 1886(d)(8)(B) of the Act. For a detailed discussion of these changes, see the **Federal Register** rule (55 FR 15150) published on April 20, 1990.

The counties affected by these revisions and their wage index values, effective for hospital discharges occurring on or after April 1, 1990, are listed below. We will apply these new wage index values in determining payment for ASC services furnished on or after July 1, 1990.

WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN—USING URBAN AREA WAGE INDEX

County	*Urban area*	*Wage index*
Macoupin, IL	St. Louis, MO-IL	1.0126
Mason, IL	Peoria, IL	.9794
Clinton, IN	Lafayette, IN	.8843
Allegan, MI	Grand Rapids, MI	1.0078
Ionia, MI	Lansing-East Lansing, MI.	1.0360
Shiawassee, MI	Flint, MI	1.1653
Tuscola, MI	Saginaw-Bay City-Midland, MI.	1.0769
Clinton, MO	Kansas City, KS-Mo	1.0093
Van Wert, OH	Lima, OH	.9178
Cherokee, SC	Greenville-Spartanburg, SC.	.9322
Bedford, VA	Roanoke, VA	.8224
Fredericksburg City, VA.	Washington, DC-MD-VA	1.0827
Jefferson, WI	Milwaukee, WI	1.0132
Walworth, WI	Milwaukee, WI	1.0132
Jefferson, WV	Washington, DC-MD-VA	1.0827

WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN—COMPUTED AS SEPARATE URBAN AREAS

County	Urban area	Wage index
Limestone, AL	Huntsville, AL	0.7455
Marshall, AL	Huntsville, AL	.7207
Charlotte, FL	Sarasota, FL	.8311
Indian River, FL	Fort Pierce, FL	.8613
Lenawee, MI	Ann Arbor, MI	1.0242
Henry, IN	Anderson, IN	.8411
Columbiana, OH	Beaver County, PA	.9089

WAGE INDEX FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN—USING STATEWIDE RURAL WAGE INDEX

County	Urban area	Wage index
Christian, IL	Springfield, IL	0.7994
Jefferson, KS	Topeka, KS	.7908
Barry, MI	Battle Creek, MI	.9110
Cass, MI	Benton Harbor, MI	.9110
Van Buren, MI	Kalamazoo, MI	.9110
Harnett, NC	Fayetteville, NC	.7639
Genesee, NY	Rochester, NY	.8069
Morrow, OH	Mansfield, OH	.8650
Lawrence, PA	Beaver County, PA	.8760

C. Allowance for Intraocular Lenses

The office of the Inspector General (OIG) has continued to study pricing of IOLs and has issued three reports of its findings, one in late 1989 and two early in 1990. In the first of these studies (OAI–07–89–01661), issued on November 14, 1989, OIG found that prices for quality IOLs on the Federal Supply Schedule (FSS), which includes manufacturers awarded federal contracts, range from $95 to $198. OIG also found that the majority of Department of Veterans' Affairs (VA) medical centers and military hospitals purchase IOLs for under $200 outside the FSS. In the second study (OAI–07–89–01662), issued on January 4, 1990, OIG found that in 1989, Indian Health Service hositals paid on average $155 for IOLs from manufacturers not on the FSS.

The purpose of the third OIG study (OEI–07–89–01660), issued on April 26, 1990, was to determine the average price that Canadian hospitals pay for IOLs. OIG found that the average price on IOLs purchased by Canadian hospitals from American manufacturers is $110 (in U.S. dollars). This includes one-piece posterior chamber lenses, which are generally considered to be more expensive than other types of IOLs. OIG also found that the low prices for IOLs negotiated by Canadian hospitals were achieved without high volume purchases.

These OIG findings will be taken into consideration when Medicare payment rates for IOLs are reviewed. We continue to solicit information on the price of lenses and will evaluate all available data received during this process as we consider revising our current $200 allowance. Any change in the Medicare payment rate for IOLs will be announced in the **Federal Register**.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice such as this that results in effects meeting one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effects of this notice with comment on the general economy are expected to be less than $100 million annually. Also, we do not expect that the effects of this notice will meet the other E.O. 12291 criteria. Therefore, this notice is not a major rule under E.O. 12291, and a regualtory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entitites. For purposes of the RFA, we consider all ASCs and hospitals to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Because the updated ASC rates will provide an increase in payments to hospitals of only about 2.3 percent, it is possible that small rural hospitals may believe the updated rates are inadequate compared to the costs likely to be incurred in performing ASC procedures. While the updated ASC rates do not fully recognize actual cost increases to hospitals, the payment methodology applicable to hospitals for furnishing ASC procedures is based on a blended amount which is determined based on 50 percent of actual hospital costs and 50 percent of ASC payment rates. For the portion of the blended payment amount that is based on hospital's actual costs, cost increased resulting from inflation are fully recognized.

Under section 1833(i)(3)(A) of the Act, Congress mandated the method of determining payments to hospitals for ASC-approved procedures performed in an outpatient setting. Congress believed some comparability should exist in the amount of payment to hospitals and ASCs for similar procedures. However, Congress recognized that hospitals have certain overhead costs that ASCs do not and allowed for a blending of the payment. Finally, the total impact of these rates would also depend upon the number of Medicare beneficiaries a hosptial services and the case-mix variation. For these reasons, we have determined, and the Secretary certifies, that this notice will not have a significant effect on a substantial number of small rural hospitals. Therefore, we have not prepared a small rural hospital impact analysis.

Although we beleive an impact analysis on small rural hospitals is not required, this notice could have a significant impact on a substantial number of ASCs. Therefore, we believe that a regulatory flexibility analysis is required for ASCs. In addition, we are voluntarily providing a brief general discussion of the impact this notice may have on hospitals.

1. Impact on ASCs

We are updating the 1989 ASC payment rates, which were published in the Federal Register on Febraury 8, 1990 (55 FR 4577). Although these new rates incorporate the estimated annual rate of increase in the CPI–U for calendar year 1990 (4.21 percent), there are other factors affecting the actual payments that ASCs may receive.

First, we are using the revised HCFA hospital wage index values for rural counties with hospitals that are deemed to be urban that were published in the Federal Register (55 FR 15150) on April 20, 1990, as mandated by congress, and implemented effective on April 1, 1990. We obtained all other wage index values from the September 1, 1989 prospective payment system final rule (54 FR 36476). These values were not changed by the April 20, 1990 prospective payment system final rule. As there may be significant changes in wage index values in some locales because the labor portion of the ASC rate is only about one-third of the total payment amount, we believe that this will not have a major impact on ASC payments.

Second, variations in an ASC's Medicare case mix will affect the size of an ASC's aggregate payment increase. Although the ASC payment rates were uniformly inflated by the CPI–U for calendar year 1990, the IOL payment allowance which is currently set at $200 per lens has not been adjusted. The actual increase in total payments for a multi-specialty ASC will be about 4.0 percent as compared to the 4.21 percent increase in the CPI–U. ASCs that perform a lower than average percentage of procedures involving insertion of an IOL will receive an increase that more closely approximates the increase in the CPI–U, while those that perform a higher than average percentage of cataract procedures may expect a somewhat lower increase in their aggregate payments.

A third factor determining the effect of the change in the payment rates is the percentage of total revenue an ASC receives from Medicare. The larger the proportion of revenues an ASC receives from the Medicare program, the greater the impact of the updated rates being implemented by this document. The percentage of revenues derived from the Medicare program depends on the volume and types of services furnished. Since Medicare patients account for nearly 60 percent of all cataract cases performed in ASCs, an ASC that performs a high percentage of cataract procedures will probablly receive a higher percentage of its payments from Medicare than would an ASC with a case mix comprised largely of non-cataract cases. For an ASC that receives a large portion of their revenue from the Medicare program, the changes implemented by this notice will likely have a greater influence on the ASC's operations and management decisions than they will have on an ASC that receives a large portion of revenue from other sources.

In general, however, we expect the changes implemented by this notice to affect ASCs postively by raising the rates upon which payments are based.

2. Impact on Hospitals

As explained in the notice with comment, revising the payment methodology for ASCs, published in the Federal Register (55 FR 4526) on February 8, 1990, hospitals are paid the lowest of their aggregate cost, charges, or a blend of 50 percent of the applicable wage-adjusted ASC rate and 50 percent of the hospital-specific amount (the lower of their cost or charges) for ASC approved procedures

performed in an outpatient setting. Since most hospitals are paid on the basis of the blended payment rate, it appears that the effect of the updated rates will be to raise payment to hospitals an average of 2.3 percent, as explained below.

It should be noted that, although the blended payment methodology requires payments to be composed of a blend of 50 percent of the wage-adjusted ASC rate and 50 percent of the hospital-specific amount, the ASC portion generally accounts for less than half of the total payment. This is especially true for the more expensive cases, including cataract procedures in Groups 6 and 8. Hospital costs for these procedures may be almost twice the ASC rate. Thus, the effect of the ASC rate increase being implemented by this notice is diluted and is approximately equal to the ratio of the ASC payment portion to the total hospital payment amount multiplied by the average increase in the ASC rates of 4.21 percent.

The other factors that may significantly affect payments to ASCs (that is, changes to the wage index and case-mix variations) will have little effect on payment to hospitals. For example, the wage adjustment to the ASC portion of a hospital payment is made only to the labor portion of the ASC amount, which accounts for one-third of the ASC rate. After dividing the ASC amount in half and reducing it by the ratio of the ASC payment portion to the total hospital payment amount, the impact of the change in the wage index on a hospital's payments is very small. Similarly, the differences in the payments attributable to case-mix variations may be masked by variations in the ratio of the ASC payment portion to the total payment amount.

Another element that reduces the effect of the ASC rate increase is the application of the lowest payment screen in determining payments. Applying the lowest of costs, charges, or a blend can result in some hospitals being paid entirely on the basis of a hospital's costs or charges. In those instances, the increase in the ASC rates will have no effect on hospital payments.

Overall, ASCs and hospitals will benefit from the updated rates implemented by this notice. We have noted that the increase in payments to ASCs may be affected by the changes in the wage index values for hospitals in counties that are deemed urban that were published in the Federal Register (55 FR 15150) on April 20, 1990 and by differences in case mix. The amount of the increase to hospitals, however, appears to be less sensitive to changes in the wage index or case mix because the blended payment methodology used to pay most ASC procedures performed in hospital outpatient settings greatly reduces the effect of variations in the wage index or case mix on the ASC portion of the payment blend.

V. Other Required Information

A. Paperwork Reduction Act

This notice does not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

B. Waiver of Prior Public Comment Period

As discussed earlier in this notice, section 1833(i)(2)(A) of the Act requires that ASC payments rates be updated effective July 1, 1987 and annually thereafter. To update the rates and required by the law, we would ordinarily publish a proposed notice in the Federal Register to afford a 60-day period for public comment on the proposed updated rates. However, we believe that timely updating of the ASC payment rates to incorporate the estimated annual rate of increase in the CPI–U for 1990 and the revisions in the hospital wage index are important and in the public interest. Therefore, we find good cause to waive a prior public comment period. However, we are providing a 60-day period for public comment and we will take into consideration comments that we receive by the date and time specified above in the "Dates" section. Because of the large number of items of correspondence we normally receive concerning published notices, we cannot acknowledge or respond to the comments individually. However, if we find it necessary to issue revisions in a subsequent notice, we will respond to the comments in that notice.

Sections 1832(a)(2)(F) and 1833(i) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F) and 13951(i)); 42 CFR, 416.120, 416.125, and 416.130).

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplemental Medical Insurance)

Dated: May 18, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: June 29, 1990

Louis W. Sullivan

Secretary.

[FR Doc. 90–15767 Filed 7–3–90; 4:47pm]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–15; 9–00163; AA–10453]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Secs. 14(h)(1) and 14(h)(7) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), and 1613(h)(7), will be issued to Sealaska Corporation for 0.44 acres. The lands involved are in the vicinity of Whale Passage on Prince of Wales Island, Alaska.

T. 66 S., R. 79 E., Copper River Meridian, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Ketchikan Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 6, 1990 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 90–15484 Filed 7–3–90; 8:45 am]

BILLING CODE 4310–JA–M

[NM–920–09–4120–02]

San Juan River Regional Coal Team (RCT) New Mexico Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of RCT meeting; notice of availability.

SUMMARY: The San Juan River RCT will meet to discuss current activities on Federal coal lands in New Mexico and southwest Colorado and to consider future development plans for Federal

coal in the region. The public is invited to attend

The primary purposes of the meeting are to:

1. Review the draft Environmental Impact Statement (EIS) for the Fence Lake Project lease application;

2. Schedule the remaining steps to process this application.

3. Update the RTC on the status of coal Preference Rights Lease Applications;

4. Brief the RCT on results of a coal lease sale in Colorado; and

5. Discuss the status of the RCT and Federal-State Coal Advisory Board (FSCAB) charters, and advisory bodies in general.

DATES: The RCT will meet at 9 a.m. on Thursday, August 2, 1990.

ADDRESSES: The meeting will be held at the Hilton of Santa Fe, 100 Sandoval Street, Santa Fe, New Mexico 87504, telepone (505) 988–2811. The meeting rooms are Mesa A and B.

Copies of te draft Fence Lake Project EIS may be obtained from John Kenny, Bureau of Land Management, New Mexico State Office, Division of Mineral Resources, NM (920), P.O. Box 1449, Santa Fe, New Mexico 87504–1449, telephone (505) 988–6024.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen or Ed Heffern at the Bureau of Land Management, New Mexico State Office, Branch of Solid Minerals, NM (921), P.O. Box 1449, Santa Fe, New Mexico 87504–1449, telephone (505) 988–6109.

SUPPLEMENTARY INFORMATION: At this meeting, the EIS contractor will brief the RCT on progress on the EIS for the Fence Lake coal lease application. The BLM will report on the results of the public hearings on the draft EIS. Also, the BLM will report on the partial variance from the Data Adequacy Standards that was granted to Salt River Project.

The RCT will consider information obtained from the public in making decisions at this meeting.

Anyone who wishes to be scheduled to speak at the meeting is requested to provide written copies of their remarks to Russell Jentgen or Ed Heffern, Bureau of Land Management, at the above address by Friday, July 27, 1990. Written materials will also be accepted in lieu of or in addition to any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Status of RCT and FSCAB Charters
4. Annual BLM Coal Market Assessment
5. Current Activity and Production on Existing Leases
6. Status of Preference Right Lease Applications
7. Status of Industry Interest in San Juan Region Coal
   a. Colorado Lease Sale
   b. Other
8. Status of Fence Lake Project Lease Application
   a. Review of Draft EIS and Public Hearings
   b. The variance from the Data Adequacy Standards
   c. Schedule of Remaining Steps to Process Application
9. Public Comment
10. Scheduling of Next Meeting
11. Adjourn

Dated: June 28, 1990.

Monte G. Jordan,

Alternate Chairman, San Juan River Regional Coal Team.

[FR Doc. 90–15494 Filed 7–3–90; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Receipt of Application for Permit; R.D. Keeler

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18).

Applicant: Name: Robert Dean Keeler, 86 Fairway Drive, Douglas, Wyoming 82633; File no. PRT 748354.

Type of Permit: Public Display.

Name of Animals: Polar bear (*Ursus maritimus*); one.

Summary of Activity to be Authorized: The applicant proposes to import the trophy of one male polar bear, taken in the Northwest Territories, Canada, in May 1989, to display at this home.

Source of Marine Mammals for Display: Northwest Territories.

Period of Activity: One year.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application(s), or requests for a public hearing on this/these application(s) should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203, withn 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application(s) are available for review during normal business hours (7:45 a.m. to 4:15 p.m.) at 4401 N. Fairfax Drive, Room 430, Arlington, VA 22203.

Dated: June 29, 1990.

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90–45505 Filed 7–3–90; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL DEVELOPMENT COOPERATIVE AGENCY

Agency for International Development

Malaria Vaccine Project Advisory Committee

AGENCY: Agency for International Development, IDCA.

ACTION: Notice of partially closed meeting.

COMMITTEE: Malaria Vaccine Project Advisory Committee.

DATES AND LOCATIONS:

1. July 22, 1 p.m. to 5:30 p.m., room 1315, Department of State.
2. July 23, 8 a.m. to 5:30 p.m., room 1315.
3. July 24, 8 a.m. to 5:30 p.m.; 3 p.m. to 5:30 p.m. (closed), room 1315.
4. July 25, 8 a.m. to 5:30 p.m. (closed), room 1105, Department of State.

AGENDA: The committee will (1) Review progress toward malaria vaccine development by A.I.D. funded and other invited investigators and (2) review plans for future procurement actions.

ACCESS TO STATE DEPARTMENT: The Bureau for Diplomatic Security has implemented new procedures for being in the Department of State building. All persons, visitors and employees, are required to wear proper identification at all times while in the building. Please let Dr. Susan Nemeth know that you expect to attend the meeting and on which days at telephone No. 703–875–4993. Provide your full name, name of employing company or organization, address and telephone number *not later than July 16, 1990.* This will help you avoid waiting in line for a visitor's pass. A staff member will meet you at the Department of State entrance at 2201 C Street with your visitor's pass. Visitors who are *not*

precleared will have to wait in line and present a valid identification with photograph to the receptionist before they can be admitted to the building.

CLOSED MEETING: Portions of the meeting are closed under Exemption 9B of 5 U.S.C. 552(b) to discuss scopes of work, cost estimates and other sensitive procurement information. Disclosure of such information would be likely to significantly frustrate implementation of future procurements by A.I.D.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Nemeth, Bureau of Science and Technology, Office of Health, Agency for International Development, room 705c, SA–18, Washington, DC 20523, or (703) 875–4993.

Robert Wrin,

Acting Chief, Malaria Vaccine Development Division, Office of Health, Bureau of Science and Technology.

[FR Doc. 90–15474 Filed 7–3–90; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–190]

Certain Softballs and Polyurethane Cores Therefor; Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order under 19 U.S.C. 1337(d) to prevent the unauthorized importation into the United States of leather-covered softballs having polyurethane cores made or sold by Success Chemical Co., Taipei City, Taiwan, which infringe claim 3 of U.S. Letters Patent 3,976,295.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1092. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

ADDRESSES: Copies of the limited exclusion order, the Commission Opinion relating thereto, and all other nonconfidential documents on the record of the investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1000.

SUPPLEMENTARY INFORMATION: On September 22, 1988, the presiding administrative law judge (ALJ) issued his final initial determination (ID) finding a violation of section 337 in this investigation. Complainant, Lannom Manufacturing Co., Inc., and the Commission investigative attorney (IA) petitioned for review. On November 23, 1988, the Commission determined to review the ID on various issues. The Commission solicited written submissions from the parties to the investigation, other Federal agencies, and interested members of the public on the issues under review and on the questions of remedy, the public interest, and bonding. The Commission received submissions from all the active parties. A reexamination proceeding with respect to the patent in controversy concluded at the U.S. Patent and Trademark Office on April 10, 1990.

After considering the submissions and examining the record developed during the investigation, the Commission determined that there was a violation of section 337, and that the appropriate remedy for the violation of section 337 was issuance of a limited exclusion order.

The Commission also determined that the public interest considerations listed in subsection (d) of section 337 do not preclude issuance of a limited exclusion order and that while the order is under review by the President pursuant to subsection (j) of section 337, the excluded articles will be entitled to enter the United States under a bond in the amount of 32 percent of the articles' entered value.

The authority for the aforesaid Commission determinations and the limited exclusion order is contained in 19 U.S.C. 1337, as amended by the Omnibus Trade and Competitiveness Act of 1988, and in sections 210.53–58 of the Commission's Interim Rules of Practice and Procedure.

By order of the Commission.

Issued: June 25, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–15541 Filed 7–3–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–262]

The Economic Effects of Significant U.S. Import Restraints Phase III: Services

AGENCY: United States International Trade Commission.

ACTION: Scheduling of hearing and request for comments in connection with phase III of the investigation.

FOR FURTHER INFORMATION CONTACT: Kyle Johnson (202) 252–1229, or Donald Rousslang (202) 252–1223, Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: The Commission instituted investigation No. 332–262 following receipt of a letter dated September 9, 1988, from the Senate Committee on Finance. The Committee requested that the investigation be conducted in three consecutive annual phases addressing the effects of significant U.S. import restraints on (1) imports of manufactured products, (2) imports of agricultural products and natural resources, and (3) service industries. The Commission has submitted its report on phase I on September 11, 1989. Notice of the institution of the investigation and of the hearing and other matters related to phase I was published in the **Federal Register** of October 19, 1988 (53 FR 4071). Notice of the investigation and hearing related to phase II appeared in the **Federal Register** of October 4, 1989 (54 FR 40915).

As requested by the Committee, the phase III report (like the reports on the other two phases) will include an assessment of the effects on U.S. consumers, on the output and profits of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. It will assess the direct effect on U.S. industries that are protected by the import restraints and the indirect effects on "downstream" industries that are customers of the protected industries. In addition, this report will contain an analysis of the effects of the simultaneous removal of all significant barriers to imports of gods and services.

This phase will focus on U.S. restraints to imports of services, whether the restraints result from an Act of Congress, an action taken under the fair trade laws of the United States, such as section 201 of the Trade Act of 1974, or an international agreement. However, the report will not cover those import restraints resulting from final antidumping or countervailing duty

investigations by the ITC and the Department of Commerce, investigations by the ITC under section 337 of the Tariff Act of 1930, or section 406 of the Trade Act of 1974, or investigations by the U.S. Trade Representative under section 301 of the Trade Act of 1974.

PUBLIC HEARING: A public hearing in connection with the third phase of this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on March 6, 1991. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, February 20, 1991. The deadline for filing prehearing briefs (original and 14 copies) is February 20, 1991.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report and post-hearing briefs should be submitted at the earliest practical date and should be received no later than March 20, 1991. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252–1810.

By order of the Commission.

Dated: June 26, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–15540 Filed 7–3–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–306]

Certain Bath Accessories and Component Parts Thereof; Commission Determination Not To Review Initial Determination Terminating Investigation on the Basis of a Consent Order Agreement; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Scott D. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1099.

SUPPLEMENTARY INFORMATION: On May 10, 1990, all of the private parties in the investigation filed a joint motion to terminate the investigation on the basis of a proposed consent order. On May 23, 1990, the presiding ALJ issued an ID (Order No. 3) terminating the investigation on the basis of the proposed consent order. No petitions for review of the ID, or agency or public comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the consent order, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: June 26, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–15542 Filed 7–3–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–439 Through 444 (Final)]

Industrial Nitrocellulose From Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany of industrial nitrocellulose, [2] provided for in subheading 3912.20.00 of the Harmonized Tariff Schedule of the United States (previously classified in item 445.25 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective March 1, 1990, following preliminary determinations by the Department of Commerce that imports of industrial nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany were being sold at LTFV within the meaning of section 733(a) of the act (19 U.S.C. 1673(a)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 15, 1990 (55 FR 9781). The hearing was held in Washington, DC, on May 29, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 28, 1990. The views of the Commission are

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of these investigations does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

contained in USITC Publication 2295 (June 1990), entitled "Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany: Determinations of the Commission in Investigations Nos. 731–TA–439 through 444 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Issued: June 29, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–15543 Filed 7–3–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31658 (Sub-No. 1)]

Bloomer Shippers Railway Redevelopment League—Acquisition and Operation Exemption—Wabash Railroad Co.

The Bloomer Shippers Railway Redevelopment League (Bloomer) has filed a notice of exemption to acquire and operate 15 miles of abandoned rail line owned by Wabash Railroad Company (Wabash).[1] The line extends between milepost 98.3, at Strawn, IL, and milepost 113.2, at Gibson City, IL.

Bloomer shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

Any comments must be filed with the Commission and served on Thomas W. Leach, P.O. Box 455, 100 E. Locust St., Chatsworth, IL 60921.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 28, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–15495 Filed 7–3–90; 8:45 am]

BILLING CODE 7035–01–M

[1] The abandoment was consummated on May 1, 1990, pursuant to Commission approval in Docket No. AB–290 (Sub-No. 75).

[Docket Nos. AB–33 (Sub-No. 62); AB–33 (Sub-No. 63)]

Union Pacific Railroad Co., Abandonment between Tekoa and Fairfield in Whitman and Spokane Counties, WA and between Colfax and Tekoa and Thornton and Seltice, in Whitman County, WA; Findings

Notice is hereby given that pursuant to 49 U.S.C. 10903 that in a decision decided July 3, 1990, a finding, which is administratively final, was made by the administrative law judge stating that the present or future public convenience and necessity permit the abandonment by the applicant, Union Pacific Railroad Company, of its line of railroad in Whitman and Spokane Counties, WA between milepost 130.9 near Fairfield, WA to milepost 116.1 near Tekoa, WA, and from the latter milepost to milepost 78.1 near Colfax, WA, and from milepost 47.8 near Seltice, WA to milepost 31.8 near Thornton, WA. The abandonments are subject to:

(1) That carrier employees be protected pursuant to the employee protection conditions in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

(2) Applicant shall retain its interest in and take no steps to alter the historic integrity of all sites and instructions on the line that are 50 years old or older until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

(3) Applicant shall consult with the ACE Seattle District Office prior to any activities requiring fills between the lines or ordinary high water, or in wetlands, temporary or otherwise.

(4) That prior to any disposition of the properties involved in this proceeding applicant shall contact the State of Washington's Department of Ecology to determine whether there is in the properties significant probability of soil and/or ground water contamination.

Pursuant to the decision a certificate for abandonment is granted, to be effective August 2, 1990. However, offers either of financial assistance or to purchase the lines may be filed within ten (10) days after the publication of this notice, pursuant to 49 U.S.C. 10905.

By: Paul J. Clerman, Administrative Law Judge.

Noreta R. McGee,

Secretary.

[FR Doc. 90–15712 Filed 7–3–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; George W. Jackson

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 24, 1990, a proposed consent decree in *United States* v. *George W. Jackson,* Civil Action No. CA–5–89–0083, was lodged with the United States District Court for the Northern District of Texas. The proposed consent decree concerns a complaint filed by the United States that alleged violations of the Safe Drinking Water Act ("the Act"), 42 U.S.C. 300(f) *et seq.,* by Jackson, the owner of a public water supply system located in Lubbock, Texas. The complaint alleged that Mr. Jackson violated provisions of the National Primary Drinking Water Regulations ("the Regulations"), 40 CFR Part 141, in that he failed to conduct sampling of the water supply and analysis for coliform bacteria, and report the results of such sampling and analysis to the Texas Department of Health. The complaint sought injunctive relief to require Jackson to comply with the Act and the Regulations and civil penalties for past violations. The consent decree provides that Jackson shall henceforth fully comply with the Act and the Regulations. Jackson is also required to pay a civil penalty of $7500 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *George W. Jackson,* D.J. Ref. 90–5–1–1–3210.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Texas, room C–201–1205 Texas Avenue, Lubbock, Texas, and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Departement of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of

the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

George W. Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-15485 Filed 7-3-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; MPM Contractors Inc. et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on August 22, 1989, *United States* v. *MPM Contractors, Inc. and W.A. Michaelis*, Civil Action No. 89-2371-O in the United States District Court for the District of Kansas, and on _____, 1990, a Partial Consent Decree between the United States and defendant W.A Michaelis was lodged with the court. This Partial Consent Decree settles the government's claims in the complaint against W.A. Michaelis pursuant to sections 112 (c) and (e) of the Clean Air Act ("the Act"), 42 U.S.C. 7412 (c) and (e) and the work practice standards set forth in the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations for asbestos, 40 CFR 61.147(e) for (1) injunctive relief to protect public health and the environment in the future, and (2) for payment of eight thousand dollars ($8,000.00) in compromise and settlement of the government's claims. The complaint alleged, in part, that W.A. Michaelis was a person who was the owner of the Wolcott Building, Hutchinson, Kansas ("Site"), and who contracted with codefendant MPM Contractors, Inc. ("MPM") for the removal and disposal of asbestos from the Site prior to demolition. The complaint further alleged that defendant Michaelis failed to ensure that the friable asbestos material removed from the Site remained wet until collected for disposal in violation of the Act and the asbestos NESHAP.

Under the terms of the proposed Partial Consent Decree, the defendant agrees to (1) obey the provisions of the Act and the NESHAP at any future renovation/demolition sites owned or operated by him, (2) provide a copy of the Decree to all contractors and subcontractors retained to perform work contemplated in the Decree, and (3) allow entry of any authorized representative of the EPA for monitoring compliance with the Decree into any defendant-owned or operated facility being demolished or renovated. The Consent Decree also calls for the defendant to pay the United States eight thousand dollars ($8,000.00) in compromise and settlement within thirty (30) days of entry of the Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington,DC 20530. All comments should refer to *United States* v. *W.A. Michaelis, et al.*, D.J. Ref. 90-5-2-1-1385.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VII, Contact: Henry Rompage, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7280.

United States Attorney's Office, Assistant United States Attorney, Civil Division, 444 S.E. Quincy Street, Topeka, Kansas 66683, (913) 295-2850.

Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the Decree, please enclose a check for copying costs in the amount of $19.90 payable to Treasurer of the United States.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-15486 Filed 7-3-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Settlement Agreement; National Galvanizing, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, and section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that on June 8, 1990, a consent decree in *United States* v. *National Galvanizing, Inc., et al.*, Civil Action No. 6:89:163:0, was lodged with the United States District Court for the District of South Carolina. The complaint filed by the United States, pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9607(a), as amended, sought recovery of the response costs incurred by the United States in responding to the release and threat of release of hazardous substances at a metal plating facility located near Travelers Rest, South Carolina. The proposed consent decree settles the United States' claims against defendant Carolina Galvanizing Corporation, and requires Carolina Galvanizing Corporation to pay to the United States, within one year of entry of the consent decree, $100,000 plus interest, in partial reimbursment of the United States' response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Galvanizing, Inc., et al.*, D.J. Ref. No. 90-11-3-379. The proposed consent decree may be examined at the Region 1V Office of the Environemtnal Protection Agency, 345 Courtland Street, NW., Atlanta, Georgia. A copy of the consent decree may be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1647, Tenth and Pennsylvania Avenue, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice.

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-15487 Filed 7-3-90; 8:45 am]

BILLING CODE 4401-01-M

Antitrust Division

National Cooperative Research Notifications; Ethanol Joint Venture

Notice is hereby given that on June 1, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), S.C. Johnson & Son, Incorporated filed written notice simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Ethanol Joint

Venture ("Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activities are given below.

The parties to the Joint Venture are: Amrep; Calgon Vestal Laboratories; Caltech Industries Inc.; Catalytic Generators; Central Solutions Inc.; Chemical Specialities Manufacturers Association; Dymon, Inc.; Grow Group Inc.; Hysan Corporation; S.C. Johnson & Son, Inc.; Lehn & Fink Products Group; MDT corporation; National Laboratories; Spartan Chemical Company; and Zep Manufacturing Company

The objective of the Joint Venture is to sponsor and conduct toxicological research on the chemical known as ethanol and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Reregistration Notice-List D issued by the EPA in October 1989.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-15488 Filed 7-3-90; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Spray Drift Task Force

Notice is hereby given that on May 15, 1990, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Spray Drift Task Force filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) the identities of the parties to the Spray Drift Task Force Joint Data Development Agreement and (2) the nature and objectives of the Spray Drift Task Force. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified conditions. Pursuant to section 6(b) of the Act, the identities of the parties to the Spray Drift Task Force and its general areas of planned activities are provided below.

The parties to the Spray Drift Task Force are as follows:

American Cyanamid Company
BASF Company
DowElanco
E.I. du Pont de Nemours & Co., Inc.
Fermenta ASC Corporation
FMC Corporation
ICI Americas, Inc.
Rhone-Poulenc Ag Company

The objective of the Spray Drift Task Force is to acquire, sponsor and conduct research to develop generic spray drift data and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to current and anticipated Data Call-In Notices and Reregistration Requirements issued to pesticide registrants by the EPA.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-15489 Filed 7-3-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 16, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 16, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 25th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Agway, Inc. (USWA)	Bridgetown, NJ	6/25/90	6/15/90	24,540	Fertilizers.
Anchor Hocking Industrial Glass Co.	Monaca, PA	6/25/90	6/13/90	24,541	Glass Vases & Lamps.
Bell Drilling & Producing Co. (Workers)	Logan, OH	6/25/90	6/14/90	24,542	Oil & Gas.
Bridal Originals (ILGWU)	St. Louis, MO	6/25/90	6/15/90	24,543	Bridal Gowns.
Comptec, Inc. (Workers)	Custer, WA	6/25/90	5/30/90	24,544	Computer Keytops.
Doxsee/Bordens (Workers)	Baltimore, MD	6/25/90	6/13/90	24,545	Salad Dressing, & Spagetti Sauce.
Flextronics Inc. (Workers)	Fitchburg, MA	6/25/90	6/13/90	24,546	Circuit Boards.
Galeton Production Co.	Galeton, PA	6/25/90	6/15/90	24,547	Computer Parts.
Gladen Corp. (Company)	Bay City, MI	6/25/90	6/25/90	24,548	Machine Tools.
Glen Raven Mills, Inc. (Workers)	Rockingham, NC	6/25/90	6/14/90	24,549	Acrylic Yarn.
Guilford Mills, Inc. (Company)	Augusta, GA	6/25/90	6/18/90	24,550	Knitted Goods.
Helmerich & Payne, Inc.	Iraan, TX	6/25/90	6/15/90	24,551	Oil & Gas.
Hunt Oil Co. (Workers)	Dallas, TX	6/25/90	6/07/90	24,552	Oil & Gas.
Hunt Oil Co. (Workers)	Houston, TX	6/25/90	6/07/90	24,553	Oil & Gas.
Kellwood Co. (Company)	Greenfield, TN	6/25/90	5/24/90	24,554	Coats, Skirts & Pants.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
(The) Kittinger Co. (IUE)	Buffalo, NY	6/25/90	6/15/90	24,555	Furniture.
Laser Magnetic Storage (Workers)	Norristown, PA	6/25/90	6/12/90	24,556	Optical Magnetic Tape.
Martin-Decker (Company)	Marshall, TX	6/25/90	6/11/90	24,557	Pipe-Handling Equip.
M.G.H. Garments (ILGWU)	San Francisco, CA	6/25/90	6/08/90	24,558	Womens' Sportswear.
Neilton Point Cedar, Inc. (Company)	Quinault, WA	6/25/90	6/12/90	24,559	Shakes & Shingles.
Pillsbury/Green Giant (Company)	Watsonville, CA	6/25/90	6/12/90	24,560	Frozen Vegetables.
Premier Thread Co., Inc. (Company)	Lincoln, RI	6/25/90	6/14/90	24,561	Thread.
Robertshaw-Tennessee Div., Inc. (Company)	Carthage, TN	6/25/90	6/15/90	24,562	Appliance Timers.
Top Line Cedar (Company)	Aberdeen, WA	6/25/90	6/12/90	24,563	Shakes & Shingles.
Westinghouse Air Brake Co. (IAMAW)	Mansfield, OH	6/25/90	6/13/90	24,564	Transit Mass Electrification.

[FR Doc. 90-15510 Filed 7-3-90; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-23,868 and TA-W-23,886]

Barnes Group-Associated, Spring Associated, Spring/Raymond Merchandise, Corry, PA; Negative Determination Regarding Application for Reconsideration

By an application dated April 30, 1990 supplemented with additional information, Local #629 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 21, 1990 and published in the **Federal Register** on April 6, 1990 (55 FR 12961).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the subject firm had increased imports of gas cylinders which somewhat replaced heavy die springs produced at Corry. The union also submitted names of foreign die spring manufacturers which they claim have adversely impacted the company's business. Lastly, the union states that the company's valve spring business was sold to another company distributor which imports valve springs.

Workers at the Corry plant of Associated Spring produce springs, wire forms and metal stampings which are sold to corporate distributors (Associated Spring/Raymond Merchandise in Corry), independent distributors and the OEM market. Workers are not separately identifiable by product. Sales and production at Corry increased in 1988 compared to 1987.

Investigation findings show that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met in 1989. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of major declining customers of Barnes Group Associated Spring which accounted for a major portion of Corry's plant sales in 1989 showed that the respondents either did not import or had declining import purchases of springs, wire forms and stampings in 1989 compared to 1988.

The findings further show that the production of heavy die springs, valves and the plastic leaded chip carrier (PLCC) which were alleged to have been trade impacted did not account for a substantial share of Corry's sales or production in 1989. Virtually all of the die springs are distributed through Raymond Merchandise, a corporate affiliate which does not import die springs. The Corry plant essentially went out of the automotive valve business in 1988 prior to the relevant period of the petition.

Other findings show that gas cylinders from Sweden generally have different applications and given the small percent of die spring sales would not have contributed importantly to worker separations. Company officials indicated that the gas cylinders do not compete with die springs.

With respect to the names of foreign spring competitors submitted by the union none were customers in the period relevant to the petition. Further the affiliated customer alleged to be importing and reducing its purchases from Corry accounted for a negligible percent of Corry sales in the period relevant to the petition.

Finally, in order for service workers like those at the Raymond/Merchandise also in Corry to become certified eligible for adjustment assistance their separations must be caused importantly by a reduced demand for their services from a parent firm or a firm otherwise related to it by ownership or control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification. These conditions have not been met for workers at Raymond Merchandise.

Conclusion

After review of the application and investigate findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of June 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-15511 Filed 7-3-90; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determination regarding eligibility to apply for adjustment assistance issued during the period June 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate

subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, to threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separation at the firm.

TA-W-24, 150; Fricition Division Products, Trenton, NJ

TA-W-24, 305; Williamette Industries, Inc., Sweet Home, OR

TA-W-24, 317; Kraemer Industries, Womelsdorf, PA

TA-W-24, 921; Workwear Corp., Inc., Joplin, MO

TA-W-24, 197; United Technologies Automotive, Inc., Zanesville, OH

TA-W-24, 327; Anchor Hocking Packaging Co., Glassboro, NJ

TA-W-24, 120; Elorado Motor Corp., Minneapolis, KS

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24, 347; Marathon Electric Mfg Corp, Wausau, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24, 221; Sevko, Inc., Barboo, WI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24, 325; Strata Search, Inc., Denver, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24, 354; Sparkle Sportswear, Rahway, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24, 306; American Flange & Manufacturing Co., Inc., Linden, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24, 330; Big Yank Corp., Hattiesburg, MS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24, 331; Big Yank Corp., West Point, MS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24, 323; Big Yank Corp., Tyrone, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24, 369; Dabri Fashions, Passaic, NJ

The investigation revealed that criterion (1) has not been met. A significant number of proportion of the workers did not become totally to partially separated as required for certification.

TA-W-24, 322; Prairie Producing Co., Houston, TX

The investigation revealed that criterion (1) has not been met. A significant number of proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations

TA-W-24, 397; Ornstein Fashion, Garfield, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24, 349; Prince Garnder, Inc., Marked Tree, AR

A certification was issued covering all workers separated on or after April 23, 1989.

TA-W-24, 373; Econo-Cut, Paterson, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,396; Onadare Coats & Suits, Paterson, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,395; Q & T Coats, Inc., Paterson, NJ

A certification was issued covering all worker separation on or after April 11, 1989.

TA-W-24,324; Sprague Electric Co., Lansing, NC

A certification was issued covering all workers separated on or after April 6, 1989.

TA-W-24,398; P & G Class Fashions, Passaic, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,309; Burndy Corp., Milford, CT

A certification was issued covering all workers separated on or after March 15, 1989.

TA-W-24,315; Happy Valley Shake Co., Sedro Woolley, WA

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,313; Dynamic Industries of Michigan, Warren, MI

A certification was issued covering all workers separated on or after July 1, 1989.

TA-W-24,323; Smith Corona Corp., Cortland, NY

A certification was issued covering all workers separated on or after July 1, 1989.

TA-W-24,341; Ferro Corp., Huron, OH

A certification was issued covering all workers separated on or after March 1, 1989.

TA-W-24,401; Roman Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,351; STC Telecorp., Inc., Elizabeth, NJ

A certification was issued covering all workers separated on or after January 1, 1990.

TA-W-24,375; Epoca Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,294; Hy-Ka Cedar Products, Sedro Woolley, WA

A certification was issued covering all workers separated on or after March 14, 1989.

TA-W-24,372; E & M Coat Co., Paterson, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,374; Elisa Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,170; The Ackerman Co., Ackerman, MS

A certification was issued covering all workers separated on or after March 5, 1989.

I hereby certify that the aforementioned determinations were issued during the month of June 1990. Copies of these determinations are available for inspection in room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 28, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-15512 Filed 7-3-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,972]

Forstmann & Co., Tifton, GA, Negative Determination Regarding Application for Reconsideration

By an application dated May 25, 1990 the former workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 10, 1990 and published in the **Federal Register** on April 27, 1990 (55 FR 17837).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former workers claim imports of textiles were responsible for their worker separations.

Investigation findings show that the Tifton workers produce greige goods for other company plants of Forstmann in Georgia.

The Department's denial was based on the fact that the "contributed importantly" test was not met for the workers at Tifton because Tifton's production was transferred to other company plants. A domestic transfer of production would not provide a basis for certification. Other findings show that Forstmann & Company does not import greige goods or finished cloth and none of Forstmann's other facilities producing finished cloth and receiving greige goods from Tifton are currently certified as eligible to apply for adjustment assistance.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of June 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Acturial Services, UIS.

[FR Doc. 90-15515 Filed 7-3-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,095]

Keystone General, Inc., Blue Ash, OH, Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Keystone General, Incorporated, Blue Ash, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,095; Keystone General, Incorporated, Blue Ash, Ohio (June 20, 1990)

Signed at Washington, DC, this 28th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-15514 Filed 7-3-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,165]

Spruce Timber Inc., Hoquiam, Washington, Notice of Negative Determination Regarding Application for Reconsideration

By an application dated May 24, 1990, Local #3-2 of the International Woodworkers of America (IWA) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 7, 1990, and published in the **Federal Register** on May 30, 1990 (55 FR 21954).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that Spruce Timber is corporately related to T.J. Spradlin Inc. and Spradlin Cedar Products and hauls cedar and other types of logs to corporately affiliated and non affiliated firms.

The information provided by the union does not furnish a basis for certifying the workers of Spruce Timber. The basis for the Department's negative determination was addressed earlier in its notice of negative determination.

Investigation findings show that the workers do not produce an article within the meaning of section 223(3) of the Act. The Department of Labor has consistently determined that the performance of services does not constitute the production of an article, as required by section 222 of the Trade Act of 1974; and this determination has been upheld in the U.S. Court of Appeals.

Accordingly, the workers of Spruce Timber may be certified only if their separations were caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Spruce Timber by ownership or by a firm related by control. In any case the reduction in demand for Spruce Timber's services must originate at a production facility whose workers independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Spruce Timber.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of June 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90–15517 Filed 7–3–90; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–24,076]

Uniroyal-Goodrich Tire Co., Opelika, AL, Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 18, 1990 applicable to all workers and former workers of Uniroyal-Goodrich Tire Company, Opelika, Alabama. The notice was published in the Federal Register on May 30, 1990 (55 FR 21955).

Based on information from the United Rubber Workers and the company showing significant employment declines and increased corporate imports of auto and truck tires in 1989 compared to 1988, the Department is amending the January 1, 1990 impact date to September 1, 1989.

The intent of the certification is to cover all workers of Uniroyal-Goodrich Tire Company who were adversely affected by increased imports of articles like or directly competitive with auto and truck tires. The amended notice applicable to TA–W–24,076 is hereby issued as follows:

All workers and former workers at Uniroyal-Goodrich Tire Company, Opelika, Alabama who became totally or partially separated from employment on or after September 1, 1989 are eligible to apply for adjustment assistnce under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of June 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90–15516 Filed 7–3–90; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act; Indian and Native American Employment and Training Programs

AGENCY: Employment and Training Adminstration, Labor.

ACTION: Notice of proposed designation procedures for grantees; request for comments.

SUMMARY: This document contains proposed procedures by which the Department of Labor (DOL) will designate grantees for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA). The next cycle will cover JTPA Program Years (PYs) 1991 and 1992 (July 1, 1991 through June 30, 1993). Applicants selected for funding in PY 1991 also will be funded in PY 1992. This notice provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

DATES: The public is invited to submit written comments on the proposed procedures. Such written comments must be received on or before August 6, 1990.

ADDRESSES: Send comments to: Assistant Secretary for Employment and Training, U.S. Department of Labor, Employment and Training Administration, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: Paul A. Mayrand, Director, Office of Special Targeted Programs (OSTP).

FOR FURTHER INFORMATION CONTACT: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs. *Telephone:* 202–535–0502 (this not a toll-free number).

SUPPLEMENTARY INFORMATION:

Table of Contents

Introduction: Scope and Purpose of Notice

Section 401 of the Job Training Partnership Act (JTPA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in JTPA and in the regulations at 20 CFR part 632. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under JTPA section 401, and designates such entities as Native American grantees, contingent on all other grant award requirements being met. This notice describes how DOL proposes to make such designation decisions for the period of Program Years 1991 and 1992 (July 1, 1991 through June 30, 1993). It provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

The amount of JTPA section 401 funds to be awarded to designated Native American grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The specific organization eligibility and application requirements for designation are contained at 20 CFR 632.10 and 632.11.

DOL's application process has two parts. The Advance Notice of Intent (See part II) is optional, although strongly recommended. The Final Notice of Intent (See part III) is mandatory for all applicants. Any organization interested in being designated as a Native American grantee should be aware of and comply with these procedures.

I. General Designation Principles

Based on JTPA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) All applicants for designation shall comply with the requirements found at 20 CFR part 632 regardless of their apparent standing in the preferential hierarchy (See Part IV, preferential Hierarchy for Determining Designations, below). The basic eligibility, application and designation requirements are found in subpart B of part 632.

(2) The nature of this program is such that Indians and Native Americans in an area are entitled to program services, and are best served by a responsibile organization directly representing them and designated pursuant to the applicable regulations. JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State or federally recognized tribe, band or group on its reservation is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference applies only to the area within the reservation boundaries. A reservation organization which may have its service area given to another qualified organization for reasons specified in the regulations will be given a future opportunity to reestablish itself as the designated grantee, should it so desire.

In the event that such a tribe, band or group (including an Alaskan Native entity) is not designated to serve such entities, the DOL will consult with the governing body of such entities as provided at 20 CFR 632.10(e). Such

consulation may be accomplished in writing, in person, or by telephone, as time and circumstances permit. When such vacancies occur, the Grant Officer will continue to utilize input from the Division of Indian and Native American Programs (DINAP) in designating alternative service deliverers.

(4) In designating Native American grantees for off-reservation areas, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in this notice. As noted in (3) above, when vacancies occur, the Grant Officer will continue to utilize input from DINAP in designating alternative service deliverers.

(5) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past sixteen years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing service areas. Consistent with present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing capability to deliver employment and training services within an established service area. Such preference will be determined through input from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP), and through the use of the rating system described in this notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

(6) In preparing applications for designation, applicants should bear in mind that the purpose of JTPA is "to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment." (JTPA section 2.)

II. Advance Notice of Intent

The purpose of the Advance Notice of Intent process is to provide section 401 applicants, prior to the submission of a final Notice of Intent, with information relative to potential competition. While DOL encourages the resolution of competitive requests at the local level prior to final submission, the Advance Notice of Intent process also serves to alert those whose differences cannot be resolved of the need to submit a complete final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance process by prospective section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential competitors, to resolve conflicts if possible and to prepare a final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change service area requests in the final Notice of Intent. Therefore, as noted above, final submissions should be prepared with these possibilities in mind. Although the regulations permit incumbents to submit no more than a Standard Form 424 for their existing service areas, this choice may not be in the incumbent's best interests in the event of unanticipated competition.

By October 1 of the year preceding a designation year (in this case, by October 1, 1990), all organizations interested in being designated as section 401 grantees should submit an original and two copies of an Advance Notice of Intent. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. After the final designation procedures are published, Advance Notices are to be sent to the following address: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: ANOI/NOI Desk.

The Standard Form (SF) 424 is no longer used for the advance notification process. As in the PY 1989–1990 designation cycle, DOL will utilize the Advance Notice of Intent to expedite the identification of potentially competitive applicants.

Complete instructions will be mailed to all current grantees on or about August 15, 1990. Incumbents will also receive a description of their present service area at this time. After the final designation procedures are published, applicants may request copies of the Advance Notice instructions by writing to: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, room N–4641, 200 Constitution Avenue NW., Washington, DC 20210.

DOL's first step in the designation process is to determine which areas have more than one potential applicant for designation. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will consist of providing affected applicants with copies of all Advance Notices of Intent submitted for their requested areas. The notification will occur on or about November 15, 1990. The notification will state that organizations are encouraged to work out any conflicting requests among themselves, and that a final Notice of Intent should be submitted by the required postmarked January 1, 1991, deadline (see Part III, Notice of Intent, below).

Under the Advance Notice of Intent process, it is DOL policy that to the extent possible within the regulations, a service area and the applicant that wants to operate a Section 401 program in that area are to be determined by the Native American community to be served by the program. In the event the Native American community cannot resolve differences, applicants should take special care with their final Notices of Intent to ensure that they are complete and fully responsive to all matters covered by the preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process shall not be considered as a final submission as referenced at 20 CFR 632.11. The Advance Notice is a procedural mechanism to facilitate the designation process. The regulations do not provide for formal application for designation through the Advance Notice.

III. Notice of Intent

All applicants will submit an original and two copies of a final Notice of Intent, postmarked no later than January 1, 1991, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year. Exclusive of charts or graphs and letters of support, the Notice of Intent should not exceed 75 pages of double-space unreduced type.

After the final designation procedures are published, final Notices of Intent are to be sent to the following address: Mr. Herbert Fellman, Chief, Division of

Indian and Native American Programs, room N–4641, 200 Constitution Avenue NW., Washington, DC 20210. Attention: ANOI/NOI Desk.

The regulations permit current grantees requesting their existing service areas to submit a Standard Form 424 in lieu of a complete application. As noted earlier in this notice, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas, are encouraged to consider submitting a full Notice of Intent even if their service area request has not changed in the event that competition occurs.

Organizations are encouraged to modify the area requests identified in their Advance Notice of Intent to avoid competition with other organizations. Applicants should not add territory to the area requests identified in the Advance Notice of Intent. Any organization applying by January 1, 1991, for non-contiguous areas shall prepare a separate, complete Notice of Intent for each such area unless currently designated for such areas.

It is the DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand delivered deadlines (see Part V, Use of Panel Review Procedure, below). All information provided before the deadline must be in writing.

This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

IV. Preferential Hierarchy for Determining Designations

In cases in which only one organization is applying for a clearly identified geographic area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area. In cases in which two or more organizations apply for the same or an overlapping area, DOL will utilize the order of designation preference described in the hierarchy below. The organization which falls into the highest category of preference will be designated, assuming all other requirements are met. The preferential hierarchy is:

(1) Indian tribes, bands or groups on Federal or State reservations for their reservation; Oklahoma Indians (see Part VII, Special Designation Situations, below); and Alaskan Native entities (see Part VII, Special Designation Situations, below).

(2) Native American-controlled, community-based organizations with significant support from other Native American controlled organizations within the community for their existing DOL designated service area and all non-incumbent Native American-controlled, community-based organizations that are challenging such incumbents or seeking to serve areas for which the incumbent is not re-applying. Non-incumbent organizations, including incumbent grantees for other service areas, must submit evidence of significant support from other Native American-controlled organizations within the community, e.g., evidence of Indian and Native American control, articles of incorporation or charter, size, membership, etc.

Competition shall occur only when a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent. Such potential will be determined by the consideration of such factors as the following: Completeness of the application and quality of the contents; documentation of past experience; Native American-controlled organizational support; understanding of area training and employment needs and approach to addressing such needs; and the capability of the incumbent. In the instance of no incumbent, new applicants qualified for this category would compete against each other.

(3) Organizations (private nonprofit or units of State or local government) having a significant Native American advisory process, such as a governing body chaired by a Native American and having a majority membership of Native Americans.

(4) Non-Native American-controlled organizations without a Native American advisory process. In the event such an organization is designated, it must subsequently develop a Native American advisory process.

The Chief, DINAP, will make hierarchal determinations. He may convene a task force to assist in making such determinations. The task force also may perform such technical and advisory functions as determining which areas have more than one applicant for designation, documenting the eligibility of new applicants, and ascertaining the timeliness of final Notice of Intent submissions. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the hierarchy. Within the regulatory time constraints of the designation process, the Chief, DINAP, will utilize whatever information is available.

The applying organizations must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is appropriate and must adequately support that assertion.

V. Use of Panel Review Procedure

Competition may occur under the following circumstances:

(1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support.

(2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not re-applied for designation.

(3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy.

When competition occurs, the Grant Officer may convene a review panel of Federal officials to score the information submitted with the Notice of Intent. The purpose of the panel is to evaluate an organization's capability, based on its application, to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the final Notice of Intent. The panel results will be advisory to the Grant Officer, not binding. In reviewing information submitted by the organization, the panel will not accept simple assertions. Any information must be supported by adequate and verifiable documentation.

The factors listed below will be considered in evaluating the capability of the applicant. In developing the Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points. (20 CFR 632.10 and 632.11)

(i) Previous experience in successfully operating an employment and training program serving Indians or Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(ii) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(iii) Ability to maintain continuity of services to Indian or Native American

participants with those previously provided under JTPA—10 points.

(2) Applicant's identification of the training and employment problems and needs in the requested area and approach to addressing such problems and needs—20 points. (20 CFR 632.2)

(3) Planning Process—20 points. (20 CFR 632.11)

(i) Private sector involvement—10 points.

(ii) Community support as defined in Part VIII Designation Process Glossary, below—10 points.

(4) Administrative Capability—20 points. (20 CFR 632.11)

(i) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(ii) Experience of senior management staff to be responsible for DOL grant, if designated—5 points.

VI. Notification of Designation/ Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances where a panel is convened; input from DINAP, OSTP, the DOL Employment and Training Administration's Office of Financial and Administrative Management, and the DOL Office of the Inspector General; and any other available information regarding the organization's responsibility. The Grant Officer's decisions will be provided to all applicants by march 1, 1991, as follows:

(1) *Designation Letter.* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographic area requested in the final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or, if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter.* Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) *Nondesignation Letter.* Any organization not designated, in whole or in part, for an area requested will be notified formally of the nondesignation and given the basic reasons for the determination. An applicant for designation that is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13, or may appeal the nondesignation to an administrative law judge under the provisions of 20 CFR part 636. In an area is not designated for service through the foregoing process, alternative arrangement for service will be made in accordance with 20 CFR 632.12.

VII. Special Designation Situations

(1) *Alaskan Native Entities.* DOL has established service areas for Alaskan Native employment and training programs based on the following: the boundaries of the regions defined in the Alaska Native Claims Settlement Act (ANCSA); the boundaries of major subregional areas where the primary provide of human resource development and related services is an Indian Reorganization Act (IRA-recognized tribal council; and the boundaries of the one Federal reservation in the State. Within these established service areas, DOL has designated the primary Alaskan Native-controlled human resoure development services provider or an entity formally designated by such provider. These entities have been regional non-profit corporations, associated corporations established by the regional nonprofit corporation, IRA-recognized tribal councils and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Years 1991 and 1992.

(2) *Oklahoma Indians.* DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping service areas have been honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1991 and 1992 to preserve continuity and prevent unnecessary fragmentation.

VIII. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) *Indian- or Native American-Controlled Organization.* This is defined as any organization with a governing board, more than 50 percent of whose members are Indian or Native American people. Such an organization can be tribal government, Native Alaskan or Native Hawaiian entity, consortium, or public or private nonprofit agency. The governing board must have decision making authority for the section 401 program.

(2) *Service Area.* This is defined as the geographic area described as States counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined finally by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(4) *Community Support.* This is evidence of active participation and/or endorsement from Indian- or Native American-controlled organizations within the geographic area for which designation is requested.

While applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian- or Native American controlled, they should be aware that such endorsements do not meet DOL's definitional criteria for community support.

Signed at Washington, DC, this 29th day of June 1990.

Paul A. Mayrand

Director, Office of Special Targeted Programs.

Herbert Fellman,

Chief, Division of Indian and Native American Programs.

James C. DeLuca,

Grant Officer, Office of Grants and Contracts Management.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 90–15509 Filed 7–3–90; 8:45 am]

BILLING CODE 4510-30-M

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established

under section 308, title III, Public Law 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment, Subcommittee on Veterans' Employment and Training Policy, will meet on Monday, July 23, 1990 at 2 p.m. in room S–2217 of the Department of Labor Frances Perkins Building.

Written comments are welcome and may be submitted by addressing them to: Robert L. Jones, Chairman, Subcommittee on Veterans' Employment and Training Policy, AMVETS National Headquarters, 4647 Forbes Boulevard, Lanham, MD 20706.

The primary item on the agenda is a preliminary discussion to outline strategies for development of a national veterans' training and employment policy.

The public is invited.

Signed at Washington, DC, this 29th day of June, 1990.

Thomas E. Collins,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 90–15518 Filed 7–3–90; 8:45 am]

BILLING CODE 4510–79–M

Pension and Welfare Benefits Administration

[Exemption Application Nos. D–7662, D–7832 and D–8379]

Withdrawal of Notice of Proposed Exemption Involving the American Express Co., New York, NY and Proposed Exemption Involving IDS International, Inc., Minneapolis, MN

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Withdrawal of Notice of Proposed Exemption and Notice of Proposed Exemption.

SUMMARY: This document contains a withdrawal of a notice of pendency and a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the new proposed exemption within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the new exemption proposal.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. D–8379. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing.

SUPPLEMENTARY INFORMATION: The proposed exemption was requested in an application filed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

The application contains representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Withdrawal of Proposed Exemption

In the Federal Register dated March 15, 1989 (54 FR 10753), the Department published a notice of proposed exemption from the prohibited transaction restrictions of the Act and from certain taxes imposed by the Code. The notice of proposed exemption concerned the ability of American Express Company and its affiliates, including IDS Financial and Shearson Lehman Hutton, Inc. (collectively, American Express), except for E.F. Hutton & Company, Inc. (Hutton), to function as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984). The applicants requested an individual exemption because of American Express' inability to satisfy Section I(g) of PTE 84–14 as a result of its affiliation with Hutton.

By letters dated January 12, 1990 and February 7, 1990, the applicants requested that the exemption application on behalf of American Express be withdrawn and that the exemption be considered solely on behalf of IDS International, Inc., an affiliate of American Express.

Accordingly, the Department has determined to withdraw the above-cited notice of proposed exemption on behalf of American Express.

New Proposed Exemption

Notice is hereby given that the Department is considering granting an exemption under the authority of section 508(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the proposed exemption is granted, IDS International, Inc. (IDSII) shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of IDSII's failure to satisfy section I(g) of PTE 84–14 as a result of its affiliation with E.F. Hutton & Company, Inc. (Hutton) and Shearson Lehman Hutton, Inc. (Shearson).

Effective Date: If granted, this exemption will be effective as of the date in which IDSII became an affiliate of Hutton and Shearson.

Summary of Facts and Representations

1. Shearson is a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. (Shearson Holdings), which in turn is a majority-owned subsidiary of American Express Company. Both Shearson Holdings and American Express are publicly-owned companies whose stock is traded on the New York Stock Exchange. American Express and its subsidiaries form a diversified financial and travel services company.

On January 13, 1988, over 90 percent of the stock of E.F. Hutton Group Inc. (Hutton Group), the parent company of

Hutton, was tendered to SLBP Acquisition Corporation (SLBP), a wholly-owned subsidiary of Shearson Holdings, pursuant to an Agreement and Plan of Merger (Merger Agreement) dated December 2, 1987, as amended on December 28, 1987, entered into among Shearson Holdings, SLBP, and the Hutton Group. On January 21, 1988, as permitted by the terms of the Merger Agreement, SLBP assigned its right to purchase those shares so accepted to Shearson and Shearson purchased the shares. As a result of the acquisition of the Hutton Group stock, Shearson controls the Hutton Group and indirectly controls Hutton.

2. On May 2, 1985, Hutton entered a plea of guilty (the Guilty Plea) to an Information filed in the United States District Court for the Middle District of Pennsylvania. The Information charged that Hutton had violated the federal mail and wire fraud statutes in connection with its handling of certain checking accounts it maintained for the deposit of its own funds during the period from July 1, 1980 to February 16, 1982. The applicant represents that as a result of the Guilty Plea, Hutton agreed to pay, and has paid, a criminal fine of $2,000,000 plus $750,000 to defray the costs of the government investigation. Hutton further agreed to establish, and has established, a restitution program for the benefit of commercial banks that may have been damaged by its actions. None of the acts alleged in the Information, however, involved funds or securities owned by any investment advisory or brokerage clients of Hutton or any employee benefit plan for which Hutton or any affiliate is a party in interest.

3. On May 16, 1988, Hutton entered a plea of guilty (the Providence Plea) in the United States District Court for the District of Rhode Island on two counts of violating the Bank Secrecy Act and one count of conspiracy to violate that Act. The applicant represents that Hutton agreed to pay, and has paid, an aggregate fine of $1,010,000 as a result of the Providence Plea. The Information filed by the government in connection with the Providence Plea alleges that the conduct of the two brokers, formerly employed at Hutton-Providence, was in violation of the Bank Secrecy Act. The Bank Secrecy Act requires the filing of a Currency Transaction Report, under certain circumstances, if more than $10,000 in cash is deposited with a financial institution. The applicant represents that the brokers' unlawful conduct occurred primarily in the period from 1982 to 1983, and no such conduct transpired later than October 1984—more than three years before Shearson acquired its majority interest in Hutton.

4. On March 3, 1989, George Inserra, a broker employed by Shearson, pled guilty to charges of securities fraud, soliciting commissions in connection with an employee benefit plan, and filing a false income tax return. On the same date, John Inserra, also employed by Shearson as a broker, pled guilty to securities fraud conspiracy. Further, on May 1, 1989, the Department filed a complaint in the U.S. District Court for the Northern District of New York alleging that Shearson, among others, and its agents, misused assets of three New York Teamsters Funds (the Funds) to benefit themselves and others through a stock parking scheme and indirect fee arrangements with banks, and that Shearson mishandled the Funds' cash balances and manipulated stock purchases.

5. The applicant states that the Inserras had left the employment of Shearson in October 1985, long before the guilty pleas were entered in March 1989. The applicant further represents that although the Securities and Exchange Commission (SEC) instituted proceedings against Shearson as a result of the Inserras' activities, Shearson was not charged with any criminal offenses. Shearson settled the SEC proceedings by accepting a censure by the SEC for failure to exercise reasonable supervision of the Inserras. As part of the settlement with the SEC, Shearson agreed to institute revised policies and procedures recommended by an independent consultant to prevent the kinds of defalcations engaged in by the Inserras. The applicant represents that the independent consultant thoroughly analyzed Shearson's operations and recommended systemic changes designed to preclude the types of unsupervised actions committed by the Inserras.

6. The applicant represents that although Shearson and Hutton are totally separate from, an uninvolved with the operations of IDSII, and have no influence in, knowledge of, or involvement with IDSII's operation and policies, the criminal activities of Shearson and Hutton described above would preclude IDSII, as an affiliate of Shearson and Hutton, from serving as a "qualified professional asset manager" (QPAM) pursuant to section I(g) and V(d) of PTE 84–14. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or a affiliate [1] thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity.

7. IDSII is a registered investment advisor and a wholly owned subsidiary of IDS, which is, in turn, a wholly owned subisidiary of American Express, and has its headquarters in Minneapolis, Minnesota. IDSII also has offices in London, England, and has a total of 23 employees. Its primary business is global investment management of pension and profit sharing assets. The applicant represents that IDSII is itself totally unconnected with the specified criminal activity which affects its ability to qualify for the QPAM exemption. As set forth above, such activity is limited to the Shearson group affiliates of IDSII. The applicant further represents that IDSII is an extremely remote affiliate of Shearson and that they share no management or other supervisory personnel.

In addition, the applicant represents that IDSII has in no way been involved in the past in the management of Shearson; it has had no contact whatsoever in the management, policing, or defense of Shearson or its subsidiaries.

The IDSII Board of Directors consists of four individuals, all of whom are employees of IDS or its subsidiaries. None of these individuals has or has ever had a management role at Shearson or Hutton and none of these individuals is an employee of Shearson or Hutton.

The applicant also represents that the business operations of IDSII are independent of Shearson. IDSII reports separately from Shearson to the SEC, and to other regulatory agencies. It has its own policy manuals and internal review systems and procedures. In addition, IDSII has an internal audit system, and receives its ERISA advice from IDS ERISA Counsel. The applicant represents that none of Shearson's employees are used by IDSII to ensure or police its compliance with the laws applicable to employee benefit plans.

8. The applicant asserts that failure to grant the requested exemption will prohibit employee benefit plans for which IDSII acts as investment manager from engaging in transactions with parties in interest that would otherwise be permitted under PTE 84–14 and will

[1] For purposes of section I(g) of PTE 84–14, an "affiliate" of a person is defined, in relevant part, as "any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person . . ." (PTE 84–14 section V(d)). As such, under this definition, American Express and all its subsidiaries, including IDSII, would be considered affiliates of Shearson and Hutton.

cause the plans to forgo attractive investment opportunities. In this regard, the applicant notes that a critical aspect of the business of IDSII is foreign currency trading and much of this trading is done for ERISA plans. The applicant states that foreign currency transactions are most easily and economically accomplished by using a bank's foreign exchange inventory. When assessing such a transaction, IDSII often determines that the most advantageous source for these funds is the bank which acts as custodian for the plan on whose behalf the transaction is made. Since a transaction with a plan's custodian bank, unless IDSII is a QPAM, would appear to violate section 406(a)(1)(A) of the Act, it would be necessary for IDSII to find a bank or dealer other than the plan's custodian bank with whom to do foreign exchange transaction—an alternative that, the applicant states, may be less certain and more expensive. Thus, the applicant represents that the unavailability of the QPAM exemption works a hardship on IDSII and on the plans it serves. Accordingly, the applicant proposes that for the purposes of section V(d) of PTE 84–14 Hutton and Shearson not be considered affiliates of IDSII in order that IDSII may avail itself of the provisions of PTE 84–14, notwithstanding the affiliations of Hutton and Shearson with IDSII and the resultant failure to comply with section I(g) of PTE 84–14.

9. The applicant represents that the following safeguards will be present to assure that the flexibility which PTE 84–14 provides will be utilized by IDSII in a manner protective of and beneficial to both ERISA plans and their participants:

(a) IDSII is an extremely remote affiliate of Shearson and shares no management or supervisory personnel with Shearson or any other of its affiliates. No Shearson personnel have any control over or influence on IDSII's compliance with the laws applicable to employee benefit plans.

(b) As an investment adviser registered under the Investment Advisers Act of 1940 (the Advisers Act), IDSII is subject to the jurisdiction of the SEC and to the requirements of the Advisers Act. In this regard, IDSII must make annual filings with the SEC and is subject to unannounced audits by the SEC to assure compliance with the requirments of the Advisers Act.

(c) IDSII's ERISA plan clients are large and highly sophisticated, and hence have access to the resources needed to properly monitor IDSII's performance as investment manager;

(d) To assure that the best interests of ERISA plans are served, all of the conditions of PTE 84–14, except for Section I(G), have and will continue to apply.

10. In summary, the applicant represents that this proposed exemption satisfies the criteria of section 408(a) of the Act because, among other things; (a) IDSII is operated independently of Hutton and Shearson; (b) none of IDSII's officers is an officer or employee of Hutton or Shearson; (c) both Hutton and Shearson have undertaken substantial reforms and put in place procedures designed to prevent any recurrence of the criminal activity; and (d) IDSII will be able to take advantage of a broader variety of attractive investment opportunities on behalf of the participants and beneficiaries of its clients' plans.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 406(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that application accurately describes all material terms of the transaction which is the subject of the exemption.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Signed at Washington, DC, this 28th day of June, 1990.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–15447 Filed 7–3–90; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 90–37; Exemption Application No. D–7998 et al.]

Grant of Individual Exemptions: Equitable Life Assurance Society of the United States, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notice were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102

of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Equitable Life Assurance Society of the United States (Equitable) Located In New York, NY

[Prohibited Transaction Exemption 90–37; Exemption Application No. D–7998]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) throuth (E) of the Code, shall not apply, effective October 30, 1985, to: (1) the acquisition by Equitable's Separate Account No. 141 (the Separate Account), a single customer separate account maintained on behalf of the IBM Retirement Plans (the Plans), of a 50% equity interest in the Granite Run Mall (the Mall), in which Equitable's General Account and Equitable Variable Life Insurance Company (EVLICO) own the remaining equity interests, and which is subject to a mortgage loan (the Loan) from the General Account; (2) the continuation of the Loan from the General Account to the joint venture which owns the Granite Run Mall; and (3) any modification of the terms of the Loan; provided the following conditions have been and will continue to be met:

(a) The initial participation of the Separate Account in the purchase of the Mall was approved in advance by the independent fiduciary for the Separate Account after a complete review of all of the relevant information concerning the Mall and the Loan;

(b) The independent fiduciary will continue to monitor the investment to determine what action, if any, should be taken with respect to the investment; and

(c) Any modification of the Loan will be initiated by the independent fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 8, 1990, at 55 FR 4492.

Written Comments

The Department received four written comments from three commenters. The first commenter, the applicant, reiterated its request for exemptive relief for the potential exercise of its rights to foreclose on the property in the event of a default on the Loan by the borrowers. The applicant represented that the Loan was originally negotiated on an arm's-length basis between unrelated parties and that Equitable would only seek to exercise its rights upon a default that occurred as a result of circumstances beyond the control of Equitable as asset manager for the Separate Account. The Department is still not persuaded that adequate safeguards have been proposed by the applicant to protest against Equitable's conflict of interest in such a situation and therefore reaffirms its decision not to grant such relief herein. The Department does note, however, that Equitable may in the future apply for an exemption relating to transactions which may be entered into as a result of a default under the Loan.

The second commenter objected to the investment of the Plans' assets in a property in which Equitable held the mortgage. The applicant responded that the independent fiduciary committee (the Committee) and IBM determined that the investment in the Mall was desirable for the Plans and that the Committee negotiated the terms of the transaction on behalf of the Plans. Furthermore, the Committee will continue as the independent fiduciary for the Separate Account to monitor the investment.

The third commenter stated that a copy of the notice of proposed exemption had not been posted in his workplace. Upon investigation of the situation, IBM discovered that the notice had been improperly posted. The notice was properly posted on March 29, 1990. This commenter subsequently objected to the granting of the exemption on the grounds that the Committee was not sufficiently independent of IBM and did not adequately represent the interests of the Plans' participants and beneficiaries. The applicant noted that, pursuant to section 408(c)(3) of the Act, officers and employees of IBM are permitted to act as fiduciaries with respect to: (1) The Plans; (2) their investments; and (3) the choice of an independent fiduciary to act on the Plans' behalf. The applicant further noted that the continuing authroity of the Committee as independent fiduciary provides independent safeguards in the subject transactions.

The Committee also responded to the two comments in opposition to the exemption. The Committee reiterated that it had thoroughly reviewed and approved the final terms of the transaction and strongly recommended the investment for the Separate Account. The Committee also specifically recommended that the Mall be acquired subject to the Loan because the Loan was (and remains) at a below market interest rate, and further because the Loan was within the leveraging limits of the Separate Account. The Committee also stated that it is independent of both Equitable and IBM and that it has acted, and will continue to act, solely in the interests of the Plans and their participants and beneficiaries.

Based on its review of the entire record, the Department has decided to grant the exemption as proposed.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number).

Huselton & Morgan Self-Employed Retirement Plan (the Plan) Located in Richardson, Texas

[Prohibited Transaction Exemption 90–38; Application No. D–8259]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) The loan (the Loan) of $35,000 for a term of 5 years by the self-directed account within the Plan of Gary D. Huselton (Mr. Huselton) to Mr. Huselton, a party in interest with respect to the Plan; and (2) Mr. Huselton's personal guarantee with respect to the Loan; provided the terms of the Loan are at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the notice of

proposed exemption published at 55 FR 20870.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Maryland National Bank (MNB) Located in Columbia, Maryland

[Prohibited Transaction Exemption 90-39; Exemption Application No. D-8274]

Exemption

I. Transactions

A. The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 497 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independnet of the numbers of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 50 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment adivce are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps, Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Code; and

(b) That is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) for which MNB or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in section B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in section B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) MNB;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with MNB; or

(3) Any member of an underwriting syndicate or selling group of which MNB or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class

subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *independent* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 7, 1990 at 55 FR 18976.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Crestar Real Estate Investment Fund for Employee Benefit Trusts (the Fund) Located in Richmond, Virginia

[Prohibited Transaction Exemption 90–40; Exemption Application No. D–8284]

Exemption

The restrictions of sections 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to an interest-free loan made to the Fund on December 28, 1989, by Crestar Bank, the fiduciary of the Fund and a party in interest with respect to plans participating in the Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 7, 1990, at 55 FR 18986.

EFFECTIVE DATE: The exemption will be effective on December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Ed Cave & Sons, Inc. Profit Sharing Plan (the Plan) Located in Roseville, Minnesota

[Prohibited Transaction Application 90-41; Exemption Application D–8307]

EXEMPTION

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain land (the Property) to Ed Cave & Sons, Inc., the Plan sponsor and as such a disqualified person with respect to the Plan, provided the Plan receives the greater of $105,000 or the fair market

value of the Property at the time of the sale.[4]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 21, 1990 at 55 FR 20875.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

[4] Because Samuel Cave is the only participant in the Plan and the Employer is wholly owned by Samuel Cave, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Signed at Washington, DC, this 28th day of June 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–15448 Filed 7–3–90; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–8115 et al.]

Proposed Exemptions; Liberty Savings Assoc.; Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Departmcnt for a complete statement of the facts and representations.

Liberty Savings Association Profit Sharing Plan (the Plan) Located in Houston, Texas

[Application No. D–8115]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan to Liberty Savings Association (the Employer), a party in interest with respect to the Plan, of eleven mortgage notes (the Notes) for a sales price payable in a cash lump sum on the date of the sale, provided that the sales price is not less than the higher of the aggregate fair market value of the Notes on the date of the sale or the Plan's unrecovered cost on that date of acquiring the Notes.

Summary of Facts and Representations

1. The Plan is a profit sharing plan that is terminating. According to the Plan's 1988 annual report, the Plan covered 13 participants and had assets totalling $217,894, comprised of the

Notes primarily, and a small amount of cash and receivables. The applicant asserts that the Plan must be terminated and, due to economic conditions, there is a very limited market for these assets.

2. The trustees of the Plan make investment decisions for the Plan. Generally, a senior officer of the Employer and two members of the Employer's board of directors have been the Plan trustees. The current trustees of the Plan are H. Campbell Wood, President of the Employer; Alex Hochner, Jr., Chairman of the Employer; and Tyler D. Todd, a stockholder of the Employer. All but one of the Notes were purchased by prior trustees (the Prior Trustees) of the Plan, who are identified as: W.E. Crozier, H.C. Halamicek, Jr., and L.A. Kucera. The applicant represents that it has been unable to contact the Prior Trustees, at least one of whom is deceased.

3. The Notes document real estate mortgage loans to individual borrowers (the Borrowers) from individual lenders. The applicant represents that none of the Borrowers are parties in interest with respect to the Plan. The applicant also represents that although the Employer originates and sells mortgage loans, the Employer was in no way involved with the Notes or in the decision to purchase them for the Plans. The applicant states that the Plan purchased the Notes from their individual owners, and not from the Employer.

4. The Plan purchased ten of the Notes during the period May 25, 1977 through October 17, 1983, and the eleventh Note, on October 21, 1987 for an aggregate purchase price of $250,933.58. The outstanding principal under the Notes when the Plan purchased them aggregated $286,243.49. The applicant represents that none of the persons from whom the Plan purchased the Notes were parties in interest with respect to the Plan as of the relevant purchase dates and that, to the best of its knowledge, the Plan's acquisition and holding of the Notes were not prohibited transactions.[1] As of November 30, 1989, the remaining principal balances due under the Notes ranged from $291.60 to $41,300.92 and aggregated $140,809.40. The applicant represents that the Plan's unrecovered cost of acquiring the Notes (i.e., the aggregate amount initially paid by the Plan to purchase the Notes, less the aggregate principal repaid by the Borrowers to the Plan) amounted to $105,499.49 as of November 30, 1989.

5. The applicant assumes that the Prior Trustees, whom the applicant has been unable to contact, purchased the Notes as Plan investments because they were more knowledgeable about mortgage loans than other investment instruments. According to the applicant, the eleventh Note was purchased for the same reason, following the practice of the Prior Trustees. It is represented that since acquiring the Notes, the Plan has incurred administrative costs in servicing the Notes but has not suffered a loss on any of the Notes.

6. The applicant represents that when the Plan purchased the Notes, Plan liquidity was not a problem. The applicant states that since then, however, the Employer has experienced major staff turnover, and the Plan has distributed large amounts of benefits to long-term participants, only one of whom (a senior officer) could be considered in the highly compensated category. According to the applicant, the Plan is now in an illiquid position, unable to pay benefits now owed to its participants and beneficiaries, as well as future benefits.[2] The applicant represents that the Notes yield a low return to the Plan and are not marketable in the secondary loan market due to their low balances. The applicant states that any unrelated potential buyer of the Notes would demand a large discount in the purchase price, to the detriment of the Plan and its participants and beneficiaries. For example, in a letter dated June 26, 1989, Richard M. Scott, President of West Loop Savings and Loan Association (West Loop), in Houston, Texas, responded to the Plan's offer to sell the Notes to West Loop by declining to purchase all but the two larger Notes. He states that West Loop would consider purchasing these two Notes only at a discount of 20%. The applicant states that no relationship exists between Richard M. Scott and the Employer or the Plan.

7. On December 5, 1989, Ms. Cathy L. Baker, of Baker Mortgage Co., stated that she had examined the Plan's files regarding the Notes and is of the opinion that their aggregate fair market value would be $108,000. Ms. Baker states that she is not, and never has been, related in any way to any principals or affiliates of the Employer or to the Plan trustees. She further states that she has been employed since 1977 by Baker Mortgage Co. and is directly involved in the open market (as either buyer, seller, or broker) of owner financed mortgages. She explains that her work involves appraising real-estate notes on a daily basis to estimate market value, which the mortgage company uses as a basis to undertake liquidation of such notes, either as a principal or as brokers, and that the work requires practical knowledge of real-estate and money markets, both locally and nationally for the debt instruments handled by the mortgage company.

8. The applicant wishes to avoid a forced distress sale of the Plan's assets to the detriment of the Plan participants. Therefore, to satisfy the Plan's liquidity requirements so that the Plan will be able to pay benefits as they become due, the Employer proposes to purchase the Notes from the Plan for a single cash payment on the date of the purchase in an amount equal to the outstanding principal balances of the Notes less the unamortized discount applicable thereto (the Proposed Sale Price).[3] According to the applicant, the Proposed Sale Price equalled $124,150.74 as of November 30, 1989, exceeding both the Plan's unrecovered cost of acquiring the Notes ($105,499.49 as of November 30, 1989) and their fair market value as of that date ($108,000.00, as mentioned in the preceding paragraph). The applicant represents that the limits prescribed by section 415 of the Code would not be exceeded if the difference between the Proposed Sale Price of the Notes and their aggregate fair market value as of the sale date were treated as an Employer contribution to the Plan. The applicant also states that the Plan will not pay any commissions or other expenses in effecting the proposed sale.

9. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed sale will be a one-time transaction for cash; (b) the proposed sale will increase the liquidity of the

[1] The Department is expressing no opinion herein as to whether or not the Plan's acquisition and holding of any of the Notes were consistent with the fiduciary responsibility provisions of section 404 of the Act.

[2] The applicant represents that the Plan has borrowed funds from the Employer in order to pay benefits owed from the Plan.The applicant further represents that such loan was a prohibited transaction for which Form 5330 and excise taxes have been timely submitted to the Internal Revenue Service, and that the prohibited transaction was corrected by modifying the terms of the loan from the Employer to comply with the requirements of Prohibited Transaction Exemption (PTE) 80-26 (45 FR 38545 April 29, 1980), a class exemption permitting interest-free loans to plans if specified requirements are satisfied. The Department is expressing no opinion herein as to whether or not the Employer's loan to the Plan satisfies the requirements of PTE 80-26.

[3] As shown in 4, above, the aggregate purchase price paid by the Plan to acquire the Notes was less than their outstanding principal balances when the Plan purchased them. The difference between these two amounts represents this discount applicable to the Notes. The Plan has been amortizing the discount applicable to each Note over its term.

terminating Plan, enabling it to pay benefits to participants and beneficiaries as they become due, and will enable the Plan to dispose of low yielding assets which are highly unmarketable; (c) the Proposed Sale Price will not be less than the aggregate fair market value of the Notes and also will not be less than the aggregate unrecovered cost to the Plan of acquiring the Notes; and (d) the Plan will not pay any commissions or other expenses in effecting the proposed sale.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Imperial Palace, Inc. Restated Profit Sharing Plan (the Plan) Located in Las Vegas, Nevada

(Application No. D–8183)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sales of certain promissory notes and shares of stock by the Plan to Ralph Engelstad (Engelstad), a party in interest with respect to the Plan, provided the proceeds received by the Plan were at least the greater of the fair market value at the time of the sale or the Plan's cash outlay for the securities to the time of sale.

Effective Date: If granted, this exemption will be effective as of November 30, 1988.

Summary of Facts and Representations

1. Imperial Palace, Inc. (the Employer) is a closely held corporation that operates a hotel and casino. The Plan is a profit sharing plan having 1,394 participants and total assets of $4,854,185 as of December 31, 1988. Engelstad and his wife are the sole shareholders of the Employer. Engelstad is also an officer and director of the Employer and the trustee of the Plan.

2. The Plan purchased an equity interest in Kansas City Venture, a Texas limited partnership (whose principal asset is commercial real estate in Kansas City, Missouri) for $800,000 in October 1984. In November 1985 and February 1986, the Plan purchased two equity interests in Asheville Building Associates, a Texas limited partnership (whose principal asset is commercial real estate in Asheville, North Carolina) for $1,000,000 and $250,000, respectively. Both partnerships later experienced financial difficulties due to depressed commercial real estate markets. To upgrade its status from an equity holder to that of a creditor, the Plan sold its interests in the partnerships on September 1, 1987, to E. Trine Starnes (Starnes), a general and limited partner of each partnership, for $2,570,852. The purchase price for the interests was represented by a promissory note between the Plan and Starnes (the Starnes Note). The Starnes Note was secured by the general and limited partnership interests held by Starnes and his wholly-owned corporation.

3. In March 1984, the Plan agreed to lend $700,000 to Autohaul Industries, Inc. (Autohaul), a Michigan corporation which manufactured truck trailers. The loan was represented by a promissory note (the Autohaul Note). The Employer and Engelstad have not had at any time an equity interest in Autohaul. Autohaul had developed a new technology for enclosed auto trailers and thus the investment of Plan funds was seen by Engelstad, as trustee, as in the best interests of the Plan. However, Autohaul required additional borrowed funds in order to exploit this technology and thus sought a commercial loan from the National Bank of Detroit (the Bank). The Bank required a guarantor in order to make the loan. Engelstad desired to see the Bank loan made so that Autohaul would have adequate working funds, which in turn would benefit the Plan through its debt investment in Autohaul. Accordingly, Engelstad personally guaranteed the Bank's loan of $2,000,000 to Autohaul in December 1986.

In addition to the Plan loan, Autohaul granted the Plan's predecessor trusts the option to purchase one-third (later modified to one-half) of Autohaul's outstanding stock. The option agreement has the same date as the agreement evidencing Autohaul's loan from the Plan's predecessor trusts. The grant of the option constituted additional consideration to the trusts for making the loan. Engelstad, as Plan trustee, had anticipated that Autohaul would be successful and that its stock would increase in value. Pursuant to options which it held, the Plan subsequently purchased 1,000 shares of common stock of Autohaul (50 percent of the outstanding common stock of Autohaul) for $5,500 in June 1985.

4. The applicant represents that the Starnes Note, the Autohaul Note and the Autohaul stock have each been and continue to be non-income producing assets for the Plan. Kansas City Venture and Asheville Building Associates have both filed a petition for protection from creditors under Chapter 11 of the Bankruptcy Act. In addition, Starnes has filed an individual petition for bankruptcy under chapter 7 of the Bankruptcy Act. Autohaul has ceased all operations and its most recent financial statements show liabilities in excess of assets.

5. The San Francisco Area Office of the Department (the Area Office) recently completed a review of the activities of the Plan. As a result of that review, the Area Office indicated in a letter dated September 27, 1988, that the investments of the Plan were not sufficiently diversified because the Starnes Note accounted for too large a percentage of the assets of the Plan. Following consultation with representatives of the Area Office and with counsel for the Plan and Engelstad, the Plan determined to sell the two notes as quickly as possible in order to prevent loss to the Plan. However, the applicant represents that, in view of the insolvency of the makers of both notes and the impaired state of the security for the notes, no outside party was willing to purchase the notes. Accordingly, the Plan proposed to sell the Starnes Note and the Autohaul Note to Engelstad.

6. The Plan appointed Jeffrey N. Clayton (Clayton), an attorney in Salt Lake City, Utah, as an independent fiduciary to review the proposed sale. Clayton has had extensive experience in the pension and employee benefit fields and served as the Administrator of Pension and Welfare Benefit Programs in the Department from November 1981 to September 1983. Clayton stated in a letter dated November 30, 1988, that he had reviewed the proposed transaction, including the relevant documents, and believed that the sale of the notes to Engelstad would be in the best interests of the Plan and its participants and beneficiaries. Clayton retained the valuation firm of Houlihan Dorton & Associates Inc. (Houlihan) to assist in his review of the transaction. Houlihan,

with offices in Salt Lake City and Las Vegas, is a professional firm specializing in business valuations and has conducted hundreds of valuations within many industries for a wide variety of purposes.

Houlihan prepared an analysis for Clayton, the purpose of which was (1) To determine whether the two notes bore reasonable rates of interest at the time the notes were entered into and (2) to determine the total amount of the principal, accrued interest and penalties owing on the notes as of November 30, 1988. Houlihan concluded that the notes had reasonable rates of interest from an investor's perspective and that the Plan would be made whole as of November 30, 1988, by selling the Starnes Note for $2,897,667 and by selling the Autohaul Note for $659,193.

7. The Starnes Note and the Autohaul Note were sold to Engelstad for cash on November 30, 1988. The purchase price was based on the current outstanding principal of each note, plus penalties where applicable, plus any past due interest, with interest brought forward to the date of acquisition. The Plan paid no commissions or fees in regard to the sale. The Starnes Note was purchased by Engelstad for $2,897,667 and the Autohaul Note was purchased for $659,193. Engelstad also reimbursed the Plan in the amount of $6,542 for accounting fees incurred by the Plan in regard to the Starnes Note. Based on the opinion of Houlihan, Clayton determined that the fair market value of each note was not more than its respective purchase price.

On February 6, 1989, Engelstad purchased the Autohaul stock for $7,278, representing the price paid by the Plan plus interest to the date of sale. Clayton determined that the sale of the Autohaul stock to Engelstad on these terms was in the best interests of the Plan and its participants and beneficiaries.

8. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act because: (1) an independent fiduciary determined that the sale of the securities was in the best interests of the Plan; (2) an analysis as to the value of the securities was prepared by a professional, experienced valuation firm; (3) the Plan was paid in cash for both the notes and the stock; (4) the transaction relieved the Plan of investments in securities issued by persons that had become insolvent; and (5) the sales will enable the Plan to achieve greater diversification and liquidity in regard to the investment of its assets.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Dyncorp Pension Trust (the Trust) Located in Reston, VA

[Application No. D–8214]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Trust of an interest in the Venture America Fund II Limited Partnership (the Partnership) to Dyncorp (the Employer), a party in interest with respect to the Trust; provided that the sales price is the greater of $250,000 or the fair market value of the interest on the date of sale.

Summary of Facts and Representations

1. The Employer is a Delaware private corporation, previously known as Dynalectron Corporation, engaged in the provision of technical services for government and aviation. The Employer sponsors a defined benefit pension plan designated as the Pension Plan for Employees of Dyncorp and Associated Companies (the Plan), the assets of which are the corpus of the Trust. The trustees of the Trust are T. Eugene Blanchard, Richard A. Hutchinson and John Schelling (the Trustees), each of whom is an employee and officer of the Employer.

The Plan was terminated in November 1988. The Trustees have applied to the Internal Revenue Service for a favorable determination with respect to the Plan termination. At the time of the Plan termination there were 6,213 participants in the Plan.

2. The Trustees represent that full and complete distributions of all benefits and interests in the Plan have been made to all Plan participants except those who appear to have been overlooked because of administrative error and those who are entitled to a share of excess Plan funding in accordance with regulations under the Act. In order to enable final distribution of Plan assets, the Trustees desire to complete the process of Plan asset liquidation which has been ongoing since the Plan termination. The sole remaining assets in the Plan are a parcel of commercial real property and the Plan's interest in the Partnership (the Interest), each of which the Trustees are seeking actively to sell. Because the Employer has offered to purchase the Interest on terms more favorable to the Plan that any offer resulting from the Trustees' efforts to sell the Interest, the Trustees propose to sell the Interest to the Employer. The Trustees are requesting an exemption to permit the Employer's purchase of the Interest from the Plan under the terms and conditions described herein.

3. The Interest consists of 2.5 units, or approximately 6.44 percent of the total outstanding limited partnership interests in the Partnership, which is a venture capital investment enterprise specializing in capital growth potential of small companies. The Trustees purchased the Interest on behalf of the Plan for $250,000 in 1986 directly from the Partnership as part of a new issue of limited partnership interests. The Trustees represent that, in anticipation of the need to complete the liquidation of Plan assets, they approached the general partner of the Partnership (the General Partner) in order to secure assistance and because the Partnership agreement provides that a limited partnership interest is not saleable without the consent of the General Partner. The Trustees represent that the General Partner is otherwise unrelated to the Plan and the Employer. In response, the General Partner offered to purchase the Interest from the Plan for $175,000 or 75 percent of the Plan's original investment in the Interest. The Trustees rejected the General Partner's offer as inadequate because the Trustees determined that the proposed purchase price was below the Interest's fair market value. The Trustees represent that they engaged unsuccessfully in good faith efforts to sell the Interest to an unrelated party at a fair market value, including solicitation of other limited partners in the Partnership and other venture fund investors and brokers.

4. The Employer proposes to pay the Plan cash for the Interest in the amount of $250,000. The Interest was appraised by Arthur J. Phelan, Jr. (Phelan), an independent professional securities appraiser and consultant in Chevy Chase, Maryland. Phelan represents that as of May 10, 1990 the Interest had a fair market value of $150,000. The Employer, which will also bear any expenses related to the transaction, represents that the proposed purchase price of $250,000 for the Interest is appropriate because of the comparatively high

projected cost of retaining the Interest in the Trust and continuing to administer the Trust until such time as the Interest might attain a higher value.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will receive cash for the Interest in the amount of $250,000, which exceeds the Interest's fair market value as determined by an independent professional appraiser; (2) The proposed transaction will enable the continued liquidation of the assets of the Plan, which has been terminated; and (3) The Plan will not incur any expenses related to the transaction.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Greenwich Capital Markets, Inc. (Greenwich) Located in New York, NY

[Application No. D-8374]

Proposed Exemption

I. Transactions

A. Effective June 1, 1988, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[4]

B. Effective June 1, 1988, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[5] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective June 1, 1988, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[6]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective June 1, 1988, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions.

A. The relief provided under Part I is available only if the following conditions are met:

---

[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate means:*

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) above for which in either such case, Greenwich or any of its affiliates is either (i) The sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. Trust means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. Underwriter means:

(1) Greenwich;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Greenwich; or

(3) Any member of an underwriting syndicate or selling group of which Greenwich or a person described in (2) is a manager or co-manager with respect to the certificates.

D. Sponsor means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. Master Servicer means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for

servicing, directly or through subservicers, the assets of the trust.

F. Subservicer means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. Servicer means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. Trustee means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. Insurer means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. Obligor means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. Excluded Plan means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. Restricted Group with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. Affiliate of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *independent* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. Sale includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. Forward delivery commitment means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. Reasonable compensation has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. Qualified Administrative Fee means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. Qualified Equipment Note Secured By A Lease means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. Qualified Motor Vehicle Lease means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. Pooling and Servicing Agreement means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Effective Date: This exemption, if granted, will be effective for transactions occurring on or after June 1, 1988.

Summary of Facts and Representations

The facts and representations contained in the application are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Greenwich is a leading dealer in U.S. Treasury and Agency Securities, mortgage-backed securities, options, and other derivative products of U.S. debt instruments. The firm is a wholly owned subsidiary of The Long-Term Credit Bank of Japan, Limited, which in its activities in the U.S., is fully subject to all U.S. banking laws. A primary dealer reporting to the Federal Reserve Bank of New York since 1984, Greenwich is a member of the National Association of Securities Dealers, the Securities Investors Protection Corporation, the Chicago Board of Trade and the International Monetary Market. Greenwich is also a member of the selling groups of the Farm Credit and Federal Home Loan Bank Systems and the Student Loan Marketing Association.

Greenwich provides trading, underwriting, research and financial services to more than 500 major institutional clients. In addition, Greenwich has extensive experience in underwriting and dealing in government guaranteed mortgage-backed securities, and in privately placing all other mortgage-backed and asset-backed securities. Subject to pending or contemplated bank regulatory approval, Greenwich expects to be very active in underwriting and dealing in all asset-backed securities which are covered by the exemption requested in this application.

Trust Assets

2. Greenwich seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;[7] (2) motor vehicle receivables investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[8]

Pooling and servicing agreements (discussed below) typically provide for the temporary investment of undistributed cash held in the trust pending distribution to certificateholders or application to the payment of trust expenses. Therefore, the requested exemption covers in addition to trusts consisting of undistributed cash, trusts containing temporary investments made therewith maturing no later than the next distribution date. In addition, the trustee has a variety of rights under the pooling and servicing agreement that it may exercise for the benefit of certificateholders which are assets of the trust. Therefore, the definition of "Trust" in section III.B of the requested exemption would also include trusts consisting of "rights of the trustee under the pooling and servicing agreement."

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. In all cases, the term of any ground lease to secure a mortgage will be at least ten years longer than the term of that mortgage.

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, by an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Greenwich, alone or together with other broker-dealers, will act as underwriter or placement agent with respect to the sale of the certificates. Most sales will be either firm commitment underwritings or private placements. In connection with a private placement, Greenwich may act either as agent or principal. Greenwich may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When payments are made on a semi-annual basis, funds are not permitted to be commingled with the assets of the servicer for any period longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities that meet rating criteria consistent with the rating of the certificates. In some cases, the servicer may be permitted to make a single deposit in the account once a month. When the servicer makes such monthly deposits, the funds received by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributions are made semiannually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time the report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to the rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Greenwich requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fastpay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[9]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities. In some transactions, fast pay/slow pay certificates may involve certificates which have the same maturities but different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest

[7] The Department notes that PTE 83-1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. Greenwich requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure.

[8] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates, because the certificates in the trusts are plan assets.

[9] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to such certificateholders is less than the amount required to be so distributed, all such certificateholders will share in the amount distributed on a pro rata basis.[10]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for substitution of assets by the sponsor only in the event of defects in loan or lease documentation discovered within a relatively short time after issuance of trust certificates (within 120 days, except in the case of 30-year obligations in which case the period may be as long as two years). Greenwich represents that the sponsor's "right of substitution" is in effect a remedy for certificateholders in the event of the sponsor's breach of its warranty or representations regarding the assets in a trust. Any obligation so substituted is required to have characteristics substantially similar to those of the original obligation.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be businesses experienced in the origination of receivables of the type included in a trust. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The duties of a trust sponsor are typically limited to depositing receivables in a trust in exchange for certificates issued by the trust that are then sold to investors. The sponsor of a trust typically selects the trustee.

9. The *trustee* of a trust is the legal owner of the receivables in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Greenwich, the trust sponsor or the servicer. Greenwich represents that the trustee will be a substantial financial institution experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor, or the trust. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Greenwich. In some cases, however, affiliates of Greenwich may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates, or will purchase the receivables from other sources in the secondary market.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust. The sponsor sells these certificates for cash to investors or securities underwriters. In some transactions, the sponsor may retain a portion of the certificates for its own account.

In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale of the certificates to pay the originator for the receivable sold to the trust.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is generally equal to the interest rate on receivables included in the trust minus a specified servicing fee.[11] This rate is generally determined by the same market forces that determine the price of a certificate. There is a direct

[10] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

[11] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

relationship between the price of certificates and the pass-through rate. For example, if certificates backed by comparable pools of mortgages are sold at different passthrough rates, the certificates having the higher pass-through rate would have a higher purchase price.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will typically retain most or all of the difference between payments received on the receivables and payments payable (at the pass-through rate) to certificateholders. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders. In some transactions, the "credit support fee" is paid in a lump sum at the time the trust is established.

14. The servicer(s) may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees and other fees related to the modification of the terms of an obligation as permitted by the provisions of the pooling and servicing agreement (including the partial release of collateral to the extent provided therein); and (c) fees and charges associated with foreclosure or repossession, the management of foreclosed or repossessed property, or any conversion of a secured obligation into cash proceeds, upon default of an obligation held by a trust.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In the event that payments on receivables are held in non-interest bearing accounts or commingled with the servicer's funds, the servicer will be required to make deposits attributable to such payments by a date specified in the pooling and servicing agreement into an account from which payments are made to certificate holders.

16. Greenwich will receive a fee in exchange for its services in connection with the securities underwriting or private placement of certificates. In a securities underwriting, this fee would normally consist of the difference between what Greenwich receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

For some public offerings, Greenwich may sell certificates on an agency basis in a best efforts underwriting. In these cases, Greenwich would receive an agency commission. In some private placements, Greenwich may buy certificates as principal, in which case its fee would consist of the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment or repurchase, the cost of administering the trust generally increases in relation to the assets of the trust, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables then included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial unpaid balance.

The purchase price of a receivable will be at least equal to the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer.

Certificate Ratings

18. At the time of purchase, the certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, reserve funds, guarantees or cash flow subordination) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of credit support is set by the rating agencies at a level that is a multiple of the very worst historical credit loss experience for obligations of the type included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer typically will first advance funds in a timely manner to cover any defaulted payments to the extent that it expects to recover those moneys out of future payments, or the master servicer, as the provider of the credit support, will be called upon (by itself on behalf of the trustee or directly by the trustee) to provide funds in such capacity to cover such payments to the full extent of its obligations under the credit support mechanism. However, in some transactions, the master servicer may not be obligated to advance funds, but instead will be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from the future payment stream.

If the master servicer fails to advance funds and fails to call upon the credit support mechanism to provide funds to cover defaulted payments, the trustee may exercise its rights as beneficiary of the credit support to obtain funds under the credit support mechanism. Therefore, in all cases, the independent trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of that credit support.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer from the provider of credit support or out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling

upon the credit support to take advantage of the fact that the dollar limit on the credit support declines as payments on receivables included in the trust are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur toward the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

The requirements of paragraph (d) apply only where the master servicer and the insurer are affiliated or are the same entity. In the case of a trust that issues subordinated certificates which may be held by the servicer or its affiliates, the requirements reflected in this paragraph would not apply insofar as the definition of insurer contained in section III.I. of the requested exemption states that a person is not an insurer solely because it holds subordinated certificates.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The essential requirements of the federal securities laws and any applicable "Blue Sky" and common law antifraud provisions are that all material information regarding the offering be furnished or otherwise made available to investors and that the offering materials do not contain any material misstatements or omissions of material facts. The prospectus or private placement memorandum will contain information pertinent to a plan's decision to invest in the certificates, including:

(a) Information concerning the certificates, including payment terms, tax consequences of owning and selling certificates, the legal investment status and rating of the certificates, and any risk factors with respect to the certificates;

(b) Information about the underlying receivables, including the types of receivables, the diversification of the receivables, their payment terms, and legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the master servicer and servicing compensation;

(d) Information about the sponsor of the trust;

(e) A full description of all material provisions of the pooling and servicing agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such certificates.

21. Certificateholders will be provided with information concerning the amount of principal and interest to be paid on certificates at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the trust.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the master servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report will also be delivered or made available to the rating agency or agencies that have rated the trust's certificates. Such report will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, certificateholders will receive a statement summarizing information regarding the trust and its assets, including underlying obligations.

Secondary Market Transactions

24. Greenwich normally attempts to make a market for securities for which it is lead or co-managing underwriter. It is also Greenwich's policy to facilitate sales by investors who purchase certificates if Greenwich has acted as agent or principal in the original placement of the certificates and if such investors request Greenwich's assistance.

Retroactive Relief

25. Greenwich represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, since June 1, 1988, it is possible that some transactions may have occurred that arguably would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), Greenwich represents that it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Greenwich seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Greenwich has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 of the Act for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificate holders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[12]

[12] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Greenwich represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[13] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[14] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Greenwich represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Greenwich represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Greenwich represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a)of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this day of 28th day of June 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-15449 Filed 7-3-90; 8:45 am]

BILLING CODE 4510-29-M

[13] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Greenwich or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[14] The applicant represents that where a trust sponsor is an affiliate of Greenwich, sales to plans by the sponsor may be exempt under PTE 75-1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Greenwich is not a fiduciary with respect to plan assets to be invested in certificates.

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in sectionn 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the work Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1:30 p.m. Friday, July 27, 1990, in room S-4215, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This ten member Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee welfare plans covered by ERISA.

The purpose of the July 27 meeting is to invite and hear comments from interested groups and the general public concerning proposals to amend the current ERISA enforcement scheme. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and or groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before July 23, 1990, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 23, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90-15599 Filed 7-3-90; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Annuities of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m., Thursday and Friday, July 26-27, 1990, in room S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This nine member Working Group was formed by the Advisory Council to

study issues relating to Annuities for employee welfare plans covered by ERISA.

The purpose of the July 26–27, meetings is to focus on the following issues:

(1) Whether objective criteria can or should be formulated to guide both fiduciaries and participants in determining whether a prudent annuity provider selection process has been followed.

(2) Whether certain types of actual or potential conflict of interest circumstances can be identified which are or should be the basis for requiring a fiduciary to seek independent advice (or an independent fiduciary) for purposes of making an annuity provider selection, and/or whether certain actual or potential conflict of interest circumstances can be identified which require that a particular annuity provider be barred from serving as a particular plan's annuity provider.

(3) Whether the appropriate ERISA agency (for agencies) can or should issue a formal list of approved ERISA annuity providers as a method of legal control or safe-harbor with respect to annuity provider selection.

(4) Any collateral fiduciary concerns that may flow from the above, e.g., fiduciary insurance problems.

(5) If the Work Group's deliberations indicate that there is some flaw in ERISA's current fiduciary rules that needs legislative amendment in order for the fiduciary standards to regulate adequately the selection of annuity providers, the Work Group will address the matter.

The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before July 23, 1990 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 23, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90–15598 Filed 7–3–90; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90–45]

Granting of Federal Information Processing Standards (FIPS) Waiver Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of granting of FIPS waiver request.

SUMMARY: Pursuant to section 3506(b) of title 44 of the U.S. Code, the authority to waive, under conditions specified by the Secretary of Commerce, NASA hereby gives notice of granting a request for waivers of FIPS 60–2, 61–1, 63–1, and 97 for the Associate Administrator for Headquarters Operations and the Associate Administrator for Space Flight, NASA Headquarters, to acquire two DEC VAX 6420 computer systems, with options to upgrade each system to a DEC VAX 6430 system.

DATE: The waivers were effective May 16, 1990.

ADDRESS: National Aeronautics and Space Administration, Code NT, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace O. Keene, Assistant Associate Administrator for Information Resources Management, 202–453–1775.

Dated: June 27, 1990.

C. Howard Robins, Jr.,

Associate Administrator for Management.

[FR Doc. 90–15473 Filed 7–3–90; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public. Interested persons are invited to submit comments by August 3, 1990. Comments may be submitted to:

(1) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335 and to;

(2) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Joe Lackey, Desk Officer, Paperwork Reduction Project (3145–0027) OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Industrial Research and Development, 1990, 1991.

Affected Public: Businesses or other for-profit.

Responses/Burden Hours: 7,000 respondents; 4 hours per reponse.

Abstract: This survey ascertains the amount and direction of R&D expenditures by U.S. industry, government agencies, corporations, research organizations, *etc.*, productivity determinates, formulate tax policy, and compare individual company performance with industry averages. All manufacturing companies with 500 or more employees, samples of companies in selected nonmanufacturing industries, and a sample of small companies are included.

Dated: June 28, 1990.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 90–15451 Filed 7–3–90; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 150–00023, General License 10 CFR 150.20 EA 90–095]

Mississippi X-Ray Service, Inc., Wesson, Mississippi; Order Modifying License (Effective Immediately)

I

Mississippi X-Ray Service, Inc., (Licensee), is the holder of Radioactive Material License No. MS–292–01, issued by the State of Mississippi, an Agreement State, which authorizes the licensee, in part, to possess and use sealed radioactive sources in various radiography exposure devices for the performance of industrial radiography in accordance with the conditions specified in the license. The license was most recently renewed on May 23, 1989. The licensee is also the holder of a General License granted by the Nuclear Regulatory Commission ("NRC" or "Commission") pursuant to 10 CFR 150.20 to conduct the same activity in non-Agreement States.

II

On April 26, 1990, an NRC inspection was conducted at a field site near

Richmond, Virginia, a non-Agreement State, where radiography was being performed by licensee personnel. Violations of NRC regulations were identified during radiography performed on a pipeline temporarily located above ground. The specific violations, which were identified by an NRC inspector during observations of four radiographic exposures, involved the failures by the individuals performing the radiography to:

1. Survey the radiographic exposure device after each of the four radiographic exposures, as required by 10 CFR 34.43(b);

2. Maintain direct surveillance of the high radiation area (created whenver the source was exposed), as required by 10 CFR 34.41, in that the individual faced away from the pipeline during the entire time of each of the four exposures. During one of these exposure periods, a non-radiation worker not associated with the pipeline construction drove a forklift within approximately 20–25 feet of the exposed source; and

3. Post required signs showing the radiation area and high radiation area, as required by 10 CFR 20.203(b) and (c) pursuant to 10 CFR 34.42, in that there were no signs posted in the areas where radiography was being performed.

III

The performance of licensed activities requires use of appropriate procedures, training of personnel regarding those procedures, and meticulous attention to detail by implementing personnel to ensure that these activities are conducted safely in accordance with regulatory requirements. This attention is particularly important during the performance of radiography given the high radiation levels of the radioactive sources that are used. The failure to properly control the use of the radiography devices could result in significant exposure of individuals, both employees and members of the general public, to radiation.

The NRC inspection disclosed that the two radiographers involved in this work on April 26, 1990 at a field site near Richmond, VA were very experienced and fully knowledgeable of the regulatory and safety requirements associated with radiography operations. Yet, they stated that they had yielded to production pressure from the client to complete the work rapidly, thereby demonstrating at least careless disregard for known safety requirements.

It is apparent from the violations of requirements that there was insufficient control of licensed activities performed by the licensee's employees, in order to assure adherence with the Commission's requirements. Therefore, the notification requirement specified below is necessary to provide the opportunity for NRC to conduct further inspections to assure that activities conducted under the General License (10 CFR 150.20) will be performed safely and in compliance with the Commission's requirements. Because of the inspection findings indicated above, protection of the health, safety, and interest of the public, as well as the licensee's employees, requires that these actions be made effective immediately. Further, I have determined that no prior notice under 10 CFR 2.201 is required.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR parts 30 and 34, *it is hereby ordered,* effective immediately, that the license shall:

For a period of one year, in addition to the requirement in 10 CFR 150.20(b)(1), notify NRC Region II, by 9 a.m. (Central time) Monday (or Tuesday, if Monday is a federal holiday) of each week, of the field sites in non-Agreement states where radiography is planned that week, as well as the specific date and time that the radiogrgraphy is planned. If unplanned work arises after the Monday notification, the new work cannot be done in a non-Agreement state unless NRC has been provided 24 hours notice. Notification shall be made to William E. Cline, Chief, Nuclear Materials Safety and Safeguards Branch, or his designated representative, at (404) 331–0346.

The Regional Administrator, NRC Region II, may, in writing, relax or terminate the above condition upon demonstration by the Licensee of good cause.

V

The Licensee or any other person adversely affected by this Order may submit an answer to this Order within twenty days of the date of this Order. The answer may set forth the matters of law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. An answer filed within twenty days of the date of this Order may also request a hearing. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies of the hearing request also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, Region II, 101 Marietta Street, suite 2900, Atlanta, Georgia 30323. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). In the absence of any request for a hearing within the specified time, this Order shall be final without further Order or proceedings. A request for a hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland, this 26th day of June 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 90–15497 Filed 7–3–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 70–00270, 30–02278–MLA; ASLBP No. 90–612–02–MLA]

Atomic Safety and Licensing Board, Before Administrative Judge Peter B. Bloch

In the Matter of the Curators of the University of Missouri (Byproduct License No. 24–00513–32; Special Nuclear Materials License No. SNM–247) (Limited Time Within Which to Petition to Intervene).

June 27, 1990.

Because the petitions to intervene of the Missouri Coalition for the Environment, the Mid–Missouri Nuclear Weapons Freeze, Inc., and Physicians for Social Responsibility/Mid Missouri Chapter, have been granted, this notice is required to be published pursuant to subpart L of our procedural regulations, 10 CFR 2.1205(i). The following information is required to be published:

(1) *Time, place, and nature of the hearing.* Pursuant to the schedule adopted on June 27, this informal proceeding shall begin through the filing of initial written presentation of a party on or before July 11, 1990 (*see* 10 CFR 2.1203(e) concerning service; 54 FR 8269). Other phases of the hearing have been fixed, pursuant to the suggestions

of the existing parties, so that the written proceeding may be concluded as early as August 17, 1990. It should be noted that areas of concern are to be pursued through written presentations that must comply with 10 CFR 2.1223, governing written presentations and written questions. All of the phases of the hearing will be in writing unless the presiding officer is persuaded that witnesses need to be called to appear in person.

(2) *The authority under which the hearing is to be held.* The hearing is to be held pursuant to the delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 and 2.1207 (54 FR 8269 (1989)) of the Commission's regulations and to a "Designation of Presiding Officer," served May 29, 1990.

(3) *The matters of fact and law to be considered.* The proceeding relates to a challenge to the license of the University of Missouri to possess and use plutonium and other activation products of uranium for the purpose of conducting research relevant to the removal of transuranic elements from spent nuclear fuel. The following areas of concern have been admitted: risks related to fire or explosions, the need for a buffer zone around the area of experimentation in order to protect public safety, the adequacy of administrative controls, the adequacy of emergency plans, the need for an environmental assessment and environmental impact statement, and the particularization of personnel responsibilities (particularly the personnel of Rockwell International, Inc., who will be on site). The proceeding may also consider areas of concern properly raised by people who may subsequently submit requests to appear.

(4) *Time.* Any petition for leave to intervene must be filed within thirty (30) days of the date of publication of this notice of hearing. The petition must set forth the interest of the requestor in the proceeding, how the interest may be affected by the results of the proceeding, and areas of concern that are germane to the subject matter of the proceeding. *See* 10 CFR 2.1205.

(5) *Request to Participate.* The representative of an interested State, county, municipality or an agency thereof may request an opportunity to participate under 10 CFR 1.1211(b) within thirty (30) days of the date of publication of this notice of hearing. The request should include a statement of areas of concern germane to the license renewal application.

Respectfully Ordered.

Peter B. Bloch,

Administrative Judge.

[FR Doc. 90-15498 Filed 7-3-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-80]

Initiation of Section 302 Investigation and Request for Public Comment: Canadian Restrictions Affecting the Importation of Beer

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1947, as amended ("the Trade Act"); request for written comments.

SUMMARY: The United States Trade Representative ("USTR") has initiated an investigation under section 302 of the Trade Act regarding Canada's restrictive practices affecting imports of beer. USTR invites written comments on the matter being investigated.

DATES: This investigation was initiated on June 29, 1990. Written comments from interested persons are due by 12:00 noon on August 6, 1990.

ADDRESSES: Office of the United States Trade Representative, room 233, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Advisor to the Assistant U.S. Trade Representative for Agriculture, (202) 395-5006, or Kenneth Freiberg, Associate General Counsel, (202) 395-7305.

SUPPLEMENTARY INFORMATION:

Petition

On May 15, 1990, G. Heileman Brewing Company, Inc. filed a petition under section 302 of the Trade Act of 1974, as amended, regarding Canadian practices affecting imports of beer. In particular, Petitioner asserts that Canadian provincial listing requirements, discriminatory mark-ups, and restrictions on distribution of beer within Canada violate the General Agreement on Tariffs and Trade (GATT) and the U.S.-Canada Free-Trade Agreement. Petitioner alleges that the Canadian practices are therefore unjustifiable, unreasonable and discriminatory, and constitute a burden or restriction on U.S. commerce. Petitioner requests that the USTR take appropriate action under section 301 of the Trade Act.

Copies of the petition are available for public inspection at the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC. An appointment to review the docket (Docket No. 301-80) may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Investigation

On June 29, 1990, pursuant to section 302(a) of the Trade Act, the USTR initiated an investigation of the Canadian practices referred to in the petition. The investigation will be conducted in accordance with the regulations set forth in 15 CFR § 2006 that became effective on June 18, 1990 (55 FR 20593).

On June 29 the Office of the USTR also requested consultations with the Government of Canada, as required by section 303(a) of the Trade Act. That request was made pursuant to Article XXIII:1 of the GATT. In preparing for such consultations, USTR will seek information and advice from the petitioner and the appropriate committees established pursuant to section 135 of the Trade Act, as provided in section 303(a)(3) of that Act. Pursuant to section 304 of the Trade Act, the deadline for determining actionability under section 301 in this investigation will be 30 days after the conclusion of GATT dispute settlement or December 29, 1991, whichever is earlier.

Public Comment

Interested persons are invited to submit written comments on the issues raised in the petition and on the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due by noon on August 6, 1990. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 222, USTR, 600 17th Street NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301-80) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each

page on each of 20 copies, and shall be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.)

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-15587 Filed 7-3-90; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28155; File No. SR-BSE-90-9]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Intermarket Trading System Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 22, 1990, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its Intermarket Trading System ("ITS") Rule. The proposed amendment will renumber the sections and paragraphs comprising the Rule, correct language which is no longer part of the ITS Plan, but that has not yet been changed in the BSE Rule and bring the provisions regarding Pre-Opening Application up to date with the ITS Plan currently in effect.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed amendment is to renumber the sections and paragraphs which comprise the ITS Rule to provide for easier reference to the Rule, to make minor corrections in text which has become outdated in light of Exchange changes and changes in the ITS Plan, and to amend those portions of the Pre-Opening Application which have been adopted and enforced by the Exchange pursuant to the current ITS Plan.

(b) The statutory basis for the proposed changes is section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to facilitate transactions in securities and perfect the mechanism of a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the amendment is concerned only with updating the ITS Rule in accordance with the stated policies, practices, and interpretations of the ITS Plan as adopted by the Exchange and the administration of the Exchange, they have become effective upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 27, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-15532 Filed 7-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28158; File No. SR-CBOE-90-15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Assessment of Certain Member Dues and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 18, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE, pursuant to rule 19b-4 of the Act, submitted a proposed rule change to implement various changes to its dues and transaction fees effective July 1, 1990.[1]

[1] Specifically, the CBOE proposes to: (1) Increase member dues from $2,000 to $2,500 per year; (2)

Continued

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Directors of the Exchange has acted to increase members' dues to $2,500 from $2,000 per year. The last increase occurred in September, 1985, when dues were doubled. The increase is a result of cost increases and the shortfall created by the loss of special member dues. The SPX/NSX transaction fee increase of $.01 will equalize the fee charged market makers trading any Exchange index option. In 1985, the fee for OEX was raised to $.05 but the SPX was not. Therefore, this increase will create a standard fee for all Exchange-traded index options.

The inactive nominee status change fee decrease to $50 shall apply whenever an inactive nominee moves to an active status. No fee will apply to moves to an inactive status. The fee was initially set at $100 when the rules creating inactive nominees were approved,[2] but the Board has re-evaluated that decision and believes the lower rate is more appropriate. In the Inactive Nominee Approval Order, inactive nominee dues were determined to be equal to member dues, and therefore, the inactive nominee dues will increase commensurate with the member dues increase described above.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and in particular, section 6(b)(4), in that the proposal provides for the equitable allocation of dues, fees and other charges among Exchange members and other persons using Exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 28, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-15530 Filed 7-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28152; File No. SR-NASD-90-23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Communications with the Public

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted on April 17, 1990, to the Securities and Exchange Commission ("SEC or "Commission") a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder.[2] The proposal amends Article III, section 35 of the NASD's Rules of Fair Practice [3] regarding: (1) Filing requirements and review procedures for advertisements and sales literature concerning public direct participation programs; (2) adjustment of the time period for spot-check review of members' advertising and sales literature; and (3) conformity of members' public communications with all applicable SEC rules.

Article III, section 35 of the Association's Rules of Fair Practice governs members' communications with the public. The rule contains internal approval and recordkeeping requirements, filing requirements and standards applicable to the content of such communications.

An amendment to Article III, section 35(c)(3) was adopted on July 1, 1987, requiring that advertising and sales literature concerning publicly offered direct participation programs be filed with the NASD for review within 10 days of first use or publication. The adoption of Article III, section 35(c)(3) has made necessary conforming amendments to three other sections of Article III, section 35 which is the objective of the instant rule change: sections 35(c)(6), 35(c)(8), and 35(e).

Notice of the full text of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 28016, May 14, 1990) and by publication in the Federal Register (55 FR 20883, May 21, 1990). No comments were received on the proposal.

---

increase the SPX/NSX market maker transaction fee from $.04 to $.05 per contract; and (3) decrease the inactive nominee status change fee from $100 to $50 for each change from inactive to active status.

[2] *See* Securities Exchange Act Release No. 28092 (June 4, 1990), 55 FR 23621 ("Inactive Nominee Approval Order") (order approving File No. SR-CBOE-90-09).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] *NASD Manual*, paragraph 2001 *et seq.*

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A [4] and the rules and regulations thereunder.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[5]

Dated: June 26, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-15531 Filed 7-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28153; File No. SR-NYSE-90-7]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change Relating to Listing Guidelines Applicable to Index Warrants

On February 16, 1990, the New York Stock Exchange, Inc., ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to allow the NYSE to list and trade warrants based upon foreign and domestic stock market indexes.

The proposed rule change was published in Securities Exchange Act Release No. 27796 (March 13, 1990), 55 FR 10340, No comments were received on the proposed rule change.[3]

The Exchange proposes to establish section 703.17 of the NYSE Company Manual for the purpose of providing listing guidelines applicable to index warrants traded on the NYSE. The proposed warrants will be cash-settled, unsecured obligations of the issuer with a term of at least one year. Only index warrants based on established domestic and foreign market indexes will be accepted for listing. The Exchange plans to list both American style warrants (*i.e.,* exercisable throughout their life) and European-style warrants (*i.e.,* exercisable only upon their expiration date). Upon exercise, or at the warrant's expiration date if not exercisable prior to such date, the holder of a warrant resembling a put option would receive payment in U.S. dollars to the extent that the underlying index has declined below a pre-stated cash settlement value, while the holder of a warrant resembling a call option would receive payment in U.S. dollars to the extent that the index has increased above the pre-stated cash settlement value. Warrants that are "out-of-the money" at the end of the stated term would expire worthless.

The NYSE will consider listing stock index warrants on a case-by-case basis. Because the warrants will represent unsecured obligations of their issuer, only warrants issued by companies that exceed the Exchange's financial listing criteria and that have assets in excess of $100 million will be eligible for listing. The Exchange proposes to require a minimum public distribution of 1,100,000 warrants together with a minimum of 400 public holders, and an aggregate market value of $4 million.

The Exchange also proposes to amend NYSE Rule 405 to apply the options suitability standard to index warrant recommendations made by members and member organizations. The suitability standard will require that a member or member organization have reasonable grounds to believe that a recommended index warrant transaction is suitable for a customer and that the customer is able to evaluate and bear the risks of the proposed transaction. The Exchange will recommend that index warrants be sold only to options-approved accounts.

In addition, the Exchange proposes to distribute circulars to its members regarding the trading of each type of stock index warrant. Specifically, the Exchange believes that investors should be afforded an explanation of the special characteristics and risks attendant to trading index warrants. The proposed circulars would note that index warrants have several unique characteristics and can be expected to fluctuate in value due to a number of interrelated factors, including, but not limited to, variations in the applicable index for the warrant. The circulars also would enumerate the suitability standards for investors of index warrants discussed above. In addition, the Exchange proposes to distribute an Information Memorandum to its membership advising them of the amendments to NYSE Rule 405 and 408 (discussed below) relating to index warrants.

Finally, the Exchange also proposes to amend NYSE Rule 408 so that a Senior Registered Options Principal ("SROP") or Registered Options Principal ("ROP") will be required to approve and initial any discretionary index warrant transaction on the day it is executed. The SROP shall review the acceptance of each discretionary account to determine that the ROP had a reasonable basis to believe that the customer was able to understand and bear the risks of the proposed transaction, thus ensuring that investors will be offered an explanation of the special characteristics and rules applicable to the trading of index warrants.

Index warrants represent another of the innovative methods of raising capital recently developed by business enterprises. Whereas corporations once raised capital solely through simple debt or equity offerings with the occasional sale of convertible debt or preferred stock, today a wide range of financing alternatives, such as commodity- or stock-index-linked debt, foreign currency denominated debt, and currency warrants are available. Index warrants are yet another example of this phenomenon. These innovative financing techniques not only allow business entities to raise capital more easily and less expensively, but also provide investors with an opportunity to obtain differential rates of return on a small capital outlay if the underlying stock index moves in a favorable direction within a specified time period.[4]

Because index warrants are derivative in nature and closely resemble index options, the Commission has several specific concerns regarding these instruments. In particular, index warrants raise customer suitability, disclosure, and secondary market

---

[4] 15 U.S.C. 78o-3 (1982).

[5] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19-4 (1989).

[3] As originally filed, the proposed rule change would only have created a regulatory framework applicable to warrants based on the NYSE Composite Index ("NYA warrants"). Under this approach, to trade warrants based on other indexes, the Exchange would have had to file separate proposals establishing the same regulatory regime. Accordingly, in order to avoid the filing of duplicative rule changes, the Exchange amended the filing on April 23, 1990, to provide that the regulatory framework propceed for NYA warrants would apply to all index warrants so that the NYSE would thereafter need only to submit a rule filing concerning the specific index warrant product, rather than have to re-propose the entire regulatory structure for each new warrant. It should be noted, however, that the Commission is not taking action on the portion of the NYSE proposal regarding NYA warrants at this time and the Exchange agreed to this deferral.

[4] Of course, if the underlying stock index moves in the wrong direction or fails to move in the right direction within the specified time period, the warrant will expire worthless and the investor will have lost his entire investment.

trading issues that must be addressed adequately. In this regard, the NYSE has proposed safeguards that are designed to meet these investor protection concerns, including the application of options suitability standards to index warrant recommendations and the requirement that discretionary orders in index warrants be approved on the day entered by a SROP or a ROP.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[5] More specifically, the Commission believes that index warrants are an innovative financing technique designed to allow an issuer to offer debt at a lower rate than in a straight debt offering in return for assuming some overall market volatility risk. Purchasers of the warrants can use them to hedge against or speculate on stock market fluctuations.

The Commission believes that the NYSE has designed reasonable rules and procedures to address the special concerns attendant to the secondary trading of index warrants. By imposing special suitability, disclosure, and compliance requirements on index warrants, the NYSE has addressed potential public customer problems that could arise from the derivative nature of these products.

For example, the distribution of Exchange Information Circulars regarding trading in index warrants should ensure that the risks and characteristics of index warrants are adequately disclosed to investors. Moreover, a SROP or ROP will be required to review any discretionary index warrant transaction on the day the transaction is executed. As with index options, this procedure will ensure that appropriate supervisory personnel at member firms review these transactions promptly. In addition, the NYSE will recommend that index warrants be sold only to options-approved accounts. Finally, the listing standards for index warrants should ensure that only substantial companies capable of meeting their warrant obligations issue the index warrants.

The Commission believes further that it is appropriate to apply options suitability and risk disclosure standards to index warrants. More specifically, index warrants possess the same basic risks as index options. Consequently, disclosure of these risks should be similar to that required for options trading. Accordingly, the Commission believes that applying existing options suitability procedures to index warrants should ensure that only customers with an understanding of options and the financial capacity to bear the risks attendant to options trading will be trading index warrants based on their broker's recommendations.

Although the proposed rule change provides a structure for listing index warrants, the NYSE will be required to submit, as separate 19(b)(2) rule changes for Commission approval, each specific stock index that it proposes to trade warrants on. The rule change will provide the Commission with an opportunity to determine, among other things, if a particular index raises the potential for manipulation or other trading abuse concerns.[6] In addition, the Commission is examining the experience with stock index warrants currently trading on the American Stock Exchange, and may in the future recommend modifications to the standards contained in this filing for a specific stock index warrant.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the portion of the proposed rule change (SR-NYSE-90-7) that establishes a regulatory framework to permit the trading of index warrants based on both domestic and foreign market indexes be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: June 26, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-15464 Filed 7-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28154; File No. SR-PSE-90-13]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to PSE Equity Floor Procedure Advices

On April 23, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to amend the Exchange's Equity Floor Procedure Advices in order to provide more definitive guidelines on decorum violations which govern behavior on the Equity Trading Floors and to set out procedures for the time-stamping of trade tickets.

The proposed rule change was noticed in Securities Exchange Act Release No. 27999 (May 7, 1990), 55 FR 20006 (May 14, 1990). No comments were received on the proposal.

The PSE proposes to amend its Equity Floor Procedure Advices ("EFPA" or "Advices") in order to provide more specific guidelines with respect to its decorum violations and to adopt trade ticket time stamping procedures. The EFPAs set forth the Board of Governor's advice on member trading. The current Advices include, but are not limited to, floor decorum, conduct on the equity floor, and reporting of transactions executed at the Exchange. The Exchange's existing EFPA 1-B sets forth certain standards of conduct for individuals on the Equity Trading Floors. These standards include prohibitions against disruptive conduct, smoking and expectorants, consumption of alcoholic beverages, and consumption of food and drink (Los Angeles Trading Floor). Violations of EFPA 1-B are punishable by fine.

The PSE proposes to amend EFPA 1-B to clarify the scope of disorderly conduct prohibited on the trading floors. First, amended EFPA 1-B will specify that the possession of weapons is prohibited on the floors of the Exchange. The penalty for a violation of this weapons prohibition will be imposed at the discretion of the Floor Trading Committee ("Committee").[3] Second, amended EFPA 1-B will indicate that any form of smoking, tobacco use, or expectorating is prohibited on the trading floors. The penalties for violations of this portion of EFPA 1-B are established in a fine schedule. Finally, EFPA 1-B will be extended to include a member's obligation to ensure the proper behavior of any guests that he or she brings onto the trading floors. The penalties for violations of the guest conduct provision of EFPA 1-B are established in a fine schedule. The penalty for the first offense is an official

---

[5] 15 U.S.C. 78(f)(b)(5) (1982).

[6] In this connection, the Commission notes that for warrants based on a foreign stock index, adequate surveillance sharing agreements between the NYSE and foreign market(s) where the index's component stocks are traded would be a necessary prerequisite to deter and detect potential manipulations or other improper or illegal trading.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The penalty may not exceed $2,500. *See Securities Exchange Act Release No. 22653 (November 21, 1985), 50 FR 48853 (approving File No. SR-PSE-85-24).*

warning. Second, third, and fourth offenses carry penalties of $50, $100, and $200, respectively. Sanctions for fifth and subsequent offenses are imposed at the discretion of the Committee.[4]

The PSE also proposes to add EFPA 3–A to its existing Advices. EFPA 3–A will define and establish regulations for the time stamping of trade tickets in order to ensure the maintenance of accurate and complete audit trails. This Advice will set forth the floor brokers' and specialists' responsibility and obligation to accurately record and ensure that order trade tickets are accurately time stamped as to the time they are received, executed, and to provide accurate time stamps for any other action taken regarding such orders. The penalties for violations of EFPA 3–A are established in a fine schedule. The penalty for the first offense is an official warning. Second and third offenses carry penalties of up to $50 and $100, respectively. Sanctions for the fourth and subsequent violations are imposed at the discretion of the Committee.[5] Moreover, EFPA 3–A provides that substantial infractions of its provisions may warrant additional disciplinary action in accordance with the Exchange's Constitution and Rules.

The Exchange states that the purpose of the amendments is to provide more specific guidelines in its Advices, to set out automatic sanctions for violations and to codify requirements that already exist within the PSE Rules. The Exchange believes that the amended Advices will facilitate transactions in securities, insure a trading environment free of undue distractions, and insure accurate audit trails through the time stamping procedures.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(1), (5) and (6) of the Act.[6] The Commission believes that the proposed rule change, which will amend the EFPAs in order to clarify the Exchange's decorum guidelines and to establish trade ticket time stamp procedures, will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission also believes that the proposal will provide the Exchange with the ability to enforce compliance by its members with the rules of the Exchange, and will establish rules providing for appropriate discipline of members for violations of the rules of the exchange.

The Commission believes that the amendments to EFPA 1–B should result in the utilization of more objective standards governing conduct on the equity trading floors. Because the amendments clarify the responsibilities as well as the prohibitions in EFPA 1–B, the proposal should provide clear and consistent standards to guide members in their trading floor activities. This, in turn, should result in increased effectiveness and consistency both in member compliance and Exchange enforcement of its Advices.

The Commission also believes that the proposal's provisions with respect to the possession of weapons, smoking, and conduct of guests are reasonble means by which the Exchange may prevent disruptive conduct on its trading floors. Because the amendmens define the scope of prohibited conduct, provide notice to members, and are tailored to serve a legitimate Exchange regulatory interest, the proposal provides fair and reasonable procedures for the regulation of trading floor conduct. These proposed amendments to EFPA 1–B should insure a trading floor environment free of conduct that could distract or interfere with market makers and floor brokers. As a result, the proposal should enhance the members' ability to engage in transactions in securities and, thereby, protect investors and the public interest.

The Commission believes that the proposed EFPA 3–A, which established regulations for the time stamping of trade tickets, should help to ensure the maintenance of accurate and complete audit trail data submitted to the Exchange. The enhanced accuracy of the audit trail data should result in improved Exchange ability to reconstruct trading activity as it occurred on the Exchange floor. This, in turn, should improve the Exchange's surveillance programs. For these reasons, the Commission believes that the proposal will provide the Exchange with the ability to enforce compliance by its members with the rules of the Exchange and should help prevent fraudulent and manipulative acts and practices.

The Commission also believes that the proposal provides appropriate penalties for violations of the EFPAs. First, the Commission believes that the automatic sanctions applicable to the smoking, guest conduct, and preliminary violations of the time stamp procedures are reasonable in relation to the infraction in question. Second, the Commission believes that it is appropriate for the Exchange to allow the Committee discretion in imposing penalties for violations of the weapon prohibition. This provision will allow the Committee some flexibility in imposing a penalty which is consistent with the gravity of a weapon offense. Finally, the Commission believes that because of the importance of time stamp procedures to audit trail data and Exchange surveillance, it is appropriate for the Exchange to provide that substantial infractions of the time stamping procedures may require additional disciplinary action in accordance with the Exchange's Constitution and Rules.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: June 27, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–15537 Filed 7–3–90; 8:45 am]

BILLING CODE 8010–01–M

[4] *Id.*

[5] *Id.*

[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1989).

[Rel. No. 34–28151; File No. SR–SSE–90–01]

Self-Regulatory Organizations; Proposed Rule Change by Spokane Stock Exchange, Inc. Relating to Adoption of a New Constitution and Rules of Fair Practice

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 29, 1990, the Spokane Stock Exchange, Incorporated ("SSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The SSE proposes to adopt a new constitution in order to establish more efficient procedures for the election of Exchange members, the function of its committees, the election of its officers and the conduct of Exchange business.

The SSE also proposes to adopt the National Association of Securities Dealers' ("NASD") Rules of Fair Practice, as amended and interpreted. The text of the proposed rule change is available for inspection and copying at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

The purpose of this rule change is to establish more efficient procedures for the election of members, the function of committees, the election of officers and the conduct of business of the Exchange. In addition, it is necessary for the Exchange to adopt procedures for the discipline of members that are consistent with the due process requirements of the Act and to adopt Rules of Fair Practice to govern trading activities.

The amended constitution for the government of the Exchange establishes detailed procedures for the operation of the Exchange, including the following:

1. Definition of significant terms;
2. Establishment of a Board of Governors of the Exchange, filling of vacancies on the Board and the election of officers with specific duties;
3. Establishing standing committees on membership, resolution of disputes, listing, auditing, and compliance, the compliance committee being a new committee authorized by the proposed rule change;
4. Procedures for acceptance of new members;
5. Establishing new procedures for discipline of members, including granting the Board of Governors the power to suspend a member summarily in the event that member is expelled, suspended, or barred from association with a member of any other self-regulatory organization;
6. Adoption of more efficient rules for the transaction and conduct of business, including a new section dealing with cross-trades; and
7. Granting the Board of Governors the power to amend rules of fair practice for the purpose of establishing guidelines for the conduct of member business.

The proposed rule change also includes the adoption of the NASD's Rules of Fair Practice, as amended and interpreted from time to time.

The proposed rule change is consistent with section 6(b) of the Act in that it will foster cooperation and coordination between members, improve the auction market for listed securities for the public benefit, and establish specific procedures for member discipline.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been received by the Exchange. The Board of Governors approved different sections of the proposal on several occasions, including resolutions adopted on April 19, 1985 and September 10, 1985. A resolution approving the rule change in its entirety was adopted by the Exchange members on May 22, 1990.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the SSE. All submissions should refer to File No. SR-SSE-90-01 and should be submitted by July 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 26, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-15538 Filed 7-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17551; File No. 811-4939]

Application for Deregistration

June 27, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commision").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: American Life/Annuity Series ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The Application was filed on March 20, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on July 23, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a

hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 333 South Hope Street, 52nd Floor, Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Staff Attorney, at (202) 272–2058 or Heidi Stam, Special Counsel, at (202) 275–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3292, (in Maryland, (301) 253–4300).

Applicant's Statements and Representations

1. The Applicant is an open-end diversified management investment company which was organized as a business trust under the laws of Massachusetts on November 7, 1986. The Applicant filed a Notification of Registration on Form N–8A and a registration statement pursuant to section 8(b) of the 1940 Act on December 16, 1986. Applicant also filed a registration statement under the Securities Act of 1933 which registration statement became effective on April 9, 1987.

2. Prior to Applicant's liquidation, Applicant's securities were held by the separate accounts of the Life Insurance Company of Virginia ("LOV"), Nationwide Life Insurance Company ("Nationwide"), and Transamerica Life Insurance and Annuity Company ("Transamerica"). Capital Research and Management Company ("CRMC") is the investment adviser to the Applicant.

3. On March 6, 1989, the Board of Trustees of Applicant voted to cease operations and authorize Applicant's officers to provide each of the insurance companies with a notice of termination of the respective participation agreements which provided for sale of Applicant's shares to their separate accounts.

4. On October 16, 1989, the Commission issued exemptive orders to Nationwide and Transamerica pursuant to section 26(b) of the 1940 Act (Investment Company Act Release Nos. IC–17178 and IC–17179, respectively), to permit the substitution of securities issued by American Variable Insurance Series ("VI") for securities issued by Applicant. On October 25, 1989, Applicant's shares held by Transamerica and Nationwide were substituted for the shares of substantially identical series of VI. The substitutions resulted in an exchange of an interest in Applicant for an interest of equal value in VI. To facilitate such exchange, Applicant sold all of its portfolio securities held by Transamerica and Nationwide to VI in exchange for a cash receivable. Applicant's shares representing this asset were, in turn, used by Transamerica and Nationwide to purchase shares of VI.

5. On September 5, 1989, the Commission issued an order pursuant to section 26(b) of the 1940 Act (Investment Company Act Release No. IC–17126) approving the substitution of securities issued by Life of Virginia Series Fund, Inc. ("LOV Series") for securities issued by Applicant. On September 7, 1989, pursuant to this order, Applicant's shares held by LOV were redeemed.

6. On December 11, 1989, Applicant's Board of Trustees and sole remaining shareholder, CRMC, voted a Plan of Liquidation into effect. On December 29, 1989, CRMC redeemed all of Applicant's remaining shares pursuant to the Plan of Liquidation.

7. Applicant has no assets, debts or other liabilities outstanding.

8. The only liquidation expenses were custodian and independent accountants' fees which were paid by CRMC, the investment adviser to the Applicant.

9. There are no securityholders of the Applicant at the time of filing of this Application. Applicant is not a party to any litigation or administrative proceedings. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for winding up its affairs. Applicant intends to file a Certificate of Termination of Trust in accordance with state law after the relief requested has been granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–15528 Filed 7–3–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17552; 811–70]

Commonwealth Fund, Indentures of Trust Plan A & B; Application for Deregistration

June 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Commonwealth Fund, Indentures of Trust Plan A & B.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on May 29, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, One Winthrop Square, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant was organized as a Massachusetts common-law trust and is an open-end diversified management investment company registered under the Act. To the best knowledge of applicant, a registration statement under the Securities Act of 1933 was filed on or about October 19, 1938. The registration statement became effective and applicant's initial public offering commenced in 1938. On October 29, 1940, applicant filed a notification of registration pursuant to section 8(a) of the Act.

2. Applicant existed pursuant to indentures of trust among individual investors ("Founders"), State Street Bank and Trust Company as trustee, and Trusteed Funds, Inc., the applicant's sponsor-underwriter. Because applicant was formed prior to the promulgation of

the Act, it was managed in accordance with the provisions of section 10(h) and 16(c) thereof. The board of directors of Trusteed Funds, Inc. (the "board of directors") functioned as the board of directors of applicant.

3. At a special meeting held on April 17, 1989, the board of directors unanimously adopted a plan of reorganization under which applicant would transfer its assets and liabilities to the Commonwealth Investment Trust (the "Trust") (File No. 811-71) in exchange for shares in the Trust, and then make a liquidating distribution to its shareholders of a like number of full and fractional shares of the Trust. The Trust is a newly formed Massachusetts business trust and is the successor to Commonwealth Fund Indenture of Trust Plan C, a Massachusetts common-law trust and a registered open-end management investment company. The board of directors determined in accordance with rule 17a-8 under the Act that the reorganization was in the best interest of the Founders and that the interests of the Founders would not be diluted as a result of the reorganization. The reorganization plan was approved by the holders of a majority of the outstanding units of beneficial interest of applicant on August 11, 1989.

4. The exchange of shares between applicant and the Trust took place on September 29, 1989. The liquidating distribution of the new shares to applicant's shareholders took place shortly thereafter.

5. The reorganization expenses were borne by the Trust and Gardner and Preston Moss, Inc. (the parent of applicant's sponsor/underwriter, Trusteed Funds, Inc., and applicant's investment advisor, Studley, Shupert and Co., Inc. of Boston). The Trust paid $122,035. Gardner and Preston Moss, Inc. paid $61,018.

6. As of the time of filing the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-15534 Filed 7-3-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 0-15551]

Issuer Delisting; Notice of Application To Withdraw From Listing; Dataflex Corporation, Common Stock, No Par Value

June 28, 1990.

Dataflex Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Boston Stock Exchange ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The securities consist of the issuer's common stock, no par value, which is the sole class of capital stock of the issuer authorized or outstanding. The issuer has 5,000,000 shares of common stock authorized and 3,306,156 shares of common stock outstanding as of the date of this application. The securities are currently listed and registered for trading in the over-the-counter market of the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ") and are quoted on the NASDAQ National Market System. The securities are traded primarily on NASDAQ, and for this reason, the Company wishes to withdraw its listing and registration on the BSE.

Any interested person may, on or before July 20, 1990, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-15535 Filed 7-3-90; 8:45 pm.]

BILLING CODE 8010-01-M

[Rel. No. IC-17553; 811-513]

GPM Fund, Inc.; Application for Deregistration June 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: GPM Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on May 29, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, One Winthrop Square, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Massachusetts corporation and an open-end diversified management investment company registered under the Act. To the best of its knowledge, applicant filed its initial registration statement under the Securities Act of 1933 on Form S-5 on February 26, 1946. The registration statement became effective shortly thereafter.

2. Applicant's board of directors unanimously adopted an agreement and

plan of reorganization under which applicant would transfer its assets and liabilities to Commonwealth Investment Trust (the "Trust") (File No. 811–71) in exchange for shares in a separate series of the Trust, and then make a liquidating distribution to its shareholders of a like number of full and fractional shares of the new series. The trust is a newly formed Massachusetts business trust and is the successor to Commonwealth Fund Indenture of Trust Plan C, a Massachusetts common-law trust and a registered open-end management investment company. The board of directors determined in accordance with Rule 17a–8 under the Act that the reorganization was in the best interest of the shareholders and that the interests of the shareholders would not be diluted as a result of the reorganization. The reorganization plan was approved by the holders of a majority of the outstanding shares of applicant on September 26, 1989.

3. The exchange of shares between applicant and the Trust took place on September 29, 1989. The liquidating distribution of the new shares to applicant's shareholders took place shortly thereafter.

4. Applicant has undertaken to pay all of the reorganization expenses. At the time of this application, applicant had paid $16,502. Because applicant has transferred all of its assets and liabilities to the Trust, any further reorganization expenses will be paid by the Trust.

5. At the time of this application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–15533 Filed 7–3–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17549; 811–5095]

Trianon Income Shares, Inc.; Application

June 25, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Trianon Income Shares, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f) of the 1940 Act and Rule 8f–1 thereunder.

SUMMARY OF APPLICATION: Applicant requests an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 27, 1990 and a letter was submitted on May 4.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 20, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicant, c/o Dickstein, Shapiro & Morin, 2101 L Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney, at (202) 272–3035, or Max Berueffy, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Trianon Income Shares, Inc. ("Trianon") incorporated in the State of Minnesota on January 21, 1985 and registered under the 1940 Act as an open-end, diversified, management investment company. Trianon's registration statement was declared effective on June 29, 1987. Trianon never commenced a public offering of its shares and, therefore, never registered any shares purusant to the Securities Act of 1933.

2. On January 11, 1990, Trianon's board of directors approved a plan of liquidation and dissolution (the "Plan"). The directors scheduled a special meeting of its shareholders for February 22, 1990 to consider the Plan. Proxy materials relating to this meeting were filed with the Commission on January 26, 1990. Trianon's stockholders unanimously approved the Plan on February 22, 1990.

3. As of February 27, 1990, Trianon had 254,899.638 outstanding shares with a net value of $10.30 for a total net asset value of $2,624,969.27. On February 28, 1990, all of its portfolio securities matured and Trianon distributed its assets to all shareholders of record.

4. Trianon filed Articles of Dissolution with the Maryland Department of Assessments and Taxation and was dissolved on March 23, 1990, pursuant to state law.

5. Trianon incurred $19,028.89 in expenses for legal, accounting and tax advice in connection with its liquidation. These costs included the cost of preparing, printing and mailing proxy materials, and filing with federal and state regulatory agencies.

6. As of the data of this application, Trianon has no remaining assets, debts or other liabilities.

7. Trianon states that it did not transfer any of its assets within the last 18 months to a separate trust and does not have any outstanding debts or other liabilities.

8. Trianon also states that it is not a party to any current or pending litigation or administrative proceedings, and does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–15529 Filed 7–3–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA–52]

Tennessee Public Service Commission Application for Inconsistency Ruling Concerning the State of Tennessee Statute on Nuclear Fuel Transportation

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The Tennessee Public Service Commission (TPSC) has applied for an administrative ruling determining

whether 65 Tenn. Code Ann., ch. 15, section 126 (1989), governing the transportation of nuclear fuel, is inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under section 112(a) of the HMTA.

DATES: Comments received on or before August 15, 1989, and rebuttal comments received on or before September 28, 1989, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 7th Street SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number, IRA–52. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Jeanne Moran, Esq., Assistant General Counsel, Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, TN 37243–0505, and that fact certified to at the time comment is submitted to the Dockets Unit. [The following format is suggested: "I hereby certify that copies of this comment have been sent to Ms. Moran at the address specified in the Federal Register."]

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–366–4362.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 U.S.C App. 1801–1813) at section 112(a), 49 U.S.C. App. 1811(a), expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address issues of preemption under the Commerce Clause or the United States Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12,612 entitled "Federalism" (52 FR 41,685 (Oct. 30, 1987)). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On May 30, 1990, the TPSC applied for an inconsistency ruling regarding 65 Tenn. Code Ann., ch. 15, section 126, which pertains to the transportation of spent nuclear fuel. That section is reproduced in appendix A to this Notice.

TPSC provided the following summary of the Tennessee statute:

> The Tennessee statute utilizes the definition for spent nuclear fuel found in 42 U.S.C. 10101 (12) and (23). [Tenn. Code Ann.] 65–15–126 stipulates that no shipment of nuclear spent fuel may be made through Tennessee unless the shipper has properly notified the Tennessee Emergency Management Agency. * * * This agency is then required to notify the TPSC which shall charge a fee of $1,000 fee per cask for truck shipments and $2,000 per cask for rail shipments originating, terminating, and traversing our state. To assure collection of this fee, a bond must be posted prior to shipping through Tennessee.

TPSC also stated that it has lead enforcement responsibility for this statute. TPSC stated that section 126(d) of the statute requires it to promulgate rules specifying requirements for escort service to be provided by the shipper of the nuclear spent fuel shipments regulated by that section. In promulgating its regulations, however, the statute prohibits TPSC from imposing any rules to regulate nuclear spent fuel shipments which are more restrictive or inconsistent with existing NRC or DOT rules or regulations. Therefore, TPSC stated that before it proceeds with the rulemaking required under 65 Tenn. Code Ann., ch. 15, section 126(f)(1), TPSC is seeking a ruling as to whether the statute is inconsistent with the HMTA and the HMR.

3. Public Comment

Comments should be limited to the issue of whether the requirements of 65 Tenn. Code Ann., ch. 15, section 126 (1989) governing the transportation of nuclear fuel are inconsistent with the HMTA and the HMR. They should specifically address the "dual compliance" and "obstacle" tests described above under "Background."

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch, Appendix A of this Notice, and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

In responding to this Notice, commenters may wish to consult RSPA's informational Notice on Preemption under the HMTA at 54 FR 2670 (June 23, 1989). That Notice contains a subject-matter index to court decisions and DOT inconsistency rulings discussing preemption issues arising under the HMTA. It also contains a table summarizing all of the inconsistency rulings. Updated versions of the index and table may be obtained from RSPA's Federal/State and Private Sector Initiatives Division (202–366–4900).

Issued in Washington, DC on June 28, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Appendix A

65–15–126. Transporting nuclear fuel.—(a) "Spent nuclear fuel" means as defined in 42 U.S.C. 10101 (12) and (23) and the following:

(1) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations;

(2) Other highly radioactive material that is designated by the nuclear regulatory commission by rule for permanent isolation; and

(3) Fuel that has been withdrawn from a nuclear reactor following irradiation, the

constituent elements of which have not been separated by reprocessing.

(b) No person, firm, or corporation shall cause to be shipped or shall arrange for transportation upon the highways or railways of this state any spent nuclear fuel unless such person, firm or corporation notifies the emergency management agency which shall notify the public service commission (hereinafter referred to as the commission) in advance of any transportation of spent nuclear fuel through or within the state. In the case of spent nuclear fuel for which by law the United States nuclear regulatory commission notifies the governor, the governor or the governor's designee shall within twenty-four (24) hours after receipt of such notification, notify the public service commission of the transportation of such materials. The notification of such shipments and all facts and circumstances relevant thereto shall be kept confidential and shall not be disclosed to the public in the interest of national security.

(c) (1) A fee shall be assessed for all nuclear spent fuel shipments at the rate of one thousand dollars ($1,000) per cask for truck shipments, and two thousand dollars ($2,000) per cask for rail shipments received at or departing from any nuclear power station or away from a reactor spent fuel storage facility located in Tennessee. The owner of such facility shall pay this fee. The same fees prescribed by this subsection shall apply to all spent nuclear fuel shipments traversing this state and the shipper of such shipments shall pay these fees.

(2) Any person, firm, or corporation shipping or arranging transportation of nuclear spent fuel within or through this state shall in advance of such shipments maintain a bond of surety with a bonding or insurance company, satisfactory to the commission and authorized to do business in this state, in such form and for such amount as the commission may prescribe, to guarantee payment of the fees prescribed by this section. Failure to pay any fees due and owing under this section within the sixty (60) days following shipments of nuclear spent fuel shall authorize the commission to proceed against the shipper's bond.

(3) All fees collected by the commission pursuant to this section shall be deposited in the general fund.

(d) Any person, firm, or corporation shipping or arranging transportation for the shipment of nuclear spent fuel and subject to the provisions of this section shall provide an appropriate escort for all such shipments within or through this state. The acceptable training, manpower, and equipment requirements for the provision of this escort service shall be established by commission rule.

(e) The provisions of this section shall apply to all shipments of nuclear spent fuel originating in, destined to or traversing the state of Tennessee.

(f) (1) The public service commission is authorized to adopt, promulgate, amend and repeal rules and regulations necessary to implement the provisions of this section.

(2) No rule or regulation, safety or otherwise, adopted, promulgated, amended or repealed by the public service commission under the authority of this section concerning transportation of nuclear materials shall impose a requirement which is more restrictive or inconsistent with that of any existing rule or regulation promulgated or adopted by the United States nuclear regulatory commission or the United States department of transportation.

(Acts 1979, ch. 424, § 2; T.C.A., § 65-1528; Acts 1989, ch. 319, §§ 1-6.)

[FR Doc. 90-15471 Filed 7-3-90; 8:45 am]
BILLING CODE 4910-60-M

International Standards on the Transport of Dangerous Goods; Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting to report the results of the third session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods.

DATES: August 1, 1990 at 9:30 a.m.

ADDRESSES: Room 4234, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will be used (1) to review the progress made by the third session of the Sub-Committee of Experts on the Transport of Dangerous Goods in completing its work program for the 1989-1990 biennium and (2) to begin preparation for the Committee of Experts on the Transport of Dangerous Goods sixteenth session to be held December 3 through 14, 1990. The Committee will consider for adoption the recommendations proposed by the Sub-Committee. Topics to be covered include classification and grouping criteria for self-reactive substances; application of performance packaging test requirements to minor variations of previously tested combination packages; requirements for infectious substances; revision of the classification and grouping criteria for gases; proposed amendments to the requirements for explosives and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

Issued in Washington, DC, on June 28, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90-15490 Filed 7-3-90; 8:45 am]
BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 27, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1989, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1150
Form Number: 990EZ
Type of Review: Revision
Title: Short Form Return of Organization Exempt From Income Tax Under section 501(c) (except black lung benefit trust or private foundation) of the Internal Revenue Code or section 4947(a)(1) trust
Description: Form 990EZ is needed to determine that Internal Revenue Code section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. IRS uses the information from this form to determine if the filers are operating within the rules of their exemption.
Respondents: Non-profit institutions.
Estimated Number of Respondents: 100,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—26 hours, 4 minutes.
Learning about the law of the form—4 hours, 8 minutes.
Preparing the form—5 hours, 41 minutes.
Copying, assembling, and sending the form to IRS—16 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 3,616,000 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Juanita F. Holder,
Departmental Reports Management Officer.
[FR Doc. 90–15488 Filed 7–3–90; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 27, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0110.
Form Number: 1099–DIV.
Type of Review: Revision.
Title: Dividends and Distributions.
Description: The form is used by the Service to insure that dividends are properly reported as required by Code section 6042 and that liquidation distributions are correctly reported as required by Code section 6043, and to determine whether payees are correctly reporting their income.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 181,000.
Estimated Burden Hours Per Response: 14 minutes.
Frequency of Response: Annually
Estimated Total Reporting Buden: 22,145,044 hours

OMB Number: 1545–0127.
Form Number: 1120–H.
Type of Review: Revision.
Title: U.S. Income Tax Return for Homeowners Associations
Description: Form 1120–H is used by homeowners associations to report their income subject to tax and compute their corect income tax liability. This information is used by IRS to determine the taxpayer's correct tax liability and for general statistics use.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 60,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—11 hours, 14 minutes
Learning about the law or the form—5 hours, 2 minutes
Preparing the form—12 hours, 53 minutes
Copying, assembling, and sending the form to IRS—2 hours, 9 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 1,878,000 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Juanita F. Holder,
Departmental Reports Management Officer.
[FR Doc. 90–15459 Filed 7–3–90; 8:45 am]
BILLING CODE 4830–01–M

Fiscal Service

Renegotiation Board Interest Rate Prompt Payment Interest Rate Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92–41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95–563) and the Prompt Payment Act (Pub. L. 97–177) are required to calculate interest due on claims "* * * at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1990 and ending on December 31, 1990, is 9 per centum per annum.

Dated: June 28, 1990.

Marcus W. Page,
Acting Fiscal Assistant Secretary.
[FR Doc. 90–15450 Filed 7–3–90; 8:45 am]
BILLING CODE 4810–35–M

Internal Revenue Service

[Delegation Order No. 156 (Rev. 12)]

Delegation of Authority; Chief Counsel Directives Manual (30) 330

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This delegation order has been revised to authorize additional Internal Revenue Service officials to disclose tax identity information in accordance with the recently enacted provisions of IRC 6103(l)(12) and 6103(m)(6); to reference Delegation Order No. 143 concerning disclosures relative to title 31 CFR part 103; and to reflect organizational restructuring, new positions, delete references to outdated titles and positions, and incorporate the transitional delegation made by the Deputy Commissioner (Operations) in a June 5, 1989 memorandum. The text of the delegation order appears below.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: Carman L. Gannotti, EX:D, rm. 1603, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone: (202) 566–4263 (not a toll-free telephone number).

Authority To Permit Disclosure of Tax Information and To Permit Testimony or the Production of Documents

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order 150–10 and in the Chief Counsel by General Counsel Order No. 4 and by Treasury Order 101–05, authority to act in matters officially before their respective functions is hereby delegated.

The authority to disclose returns and/ or return information under certain provisions of the IR Code, such as IRC 6103 (h)(1), (h)(4) and (k)(6) is not delegated herein as the language of these provisions themselves permits officers and employees of the Internal Revenue Service and the Office of the Chief Counsel to disclose such information. The authority to disclose returns and return information under IRC 6103(k)(4) is also not delegated herein as Delegation Order 114 (as revised) governs these disclosures.

(1) Deputy Chief Inspector; Deputy Assistant Commissioner; Deputy

Assistant Chief Information Officers; Division Directors (or equivalent level position); Assistant Chief Counsels; Regional Commissioners; Regional Counsels; Regional Inspectors; District Counsels; District and Service Center Directors; the Director, Austin Compliance Center; Director, Martinsburg Computing Center, and Director, Detroit Computing Center are authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns or return information to such persons as the taxpayer may designate in a written request, subject to the conditions prescribed in IRC 6103(c) and the Treasury Regulations thereunder. The authority to withhold return information upon a determination that such disclosure would seriously impair Federal tax administration is also delegated. These authorities are also delegated to the Taxpayer Ombudsman. The authority delegated in this paragraph to disclose returns or return information may be redelegated to Internal Revenue Service employees and employees of the Office of Chief Counsel to the extent necessary within the exercise of their official duties. The authority delegated in this paragraph to withhold return information may be redelegated not lower than Chiefs, Special Procedures function; Group Managers (or their equivalent); Chiefs, Appeals Offices; Chiefs, Criminal Investigation Branch; Problem Resolution Officers; and Disclosure Officers.

(b) To disclose or, in specific instances, authorize the disclosure of returns, upon the written requests of an individual taxpayer, partner, corporate officer, shareholder, administrator, executor, trustee, or other person having a material interest subject to the conditions prescribed in IRC 6103(e). The authority to disclose or, in specific instances, authorize the disclosure of return information to such persons, upon a determination that disclosure would not seriously impair Federal tax administration, as prescrived in IRC 6103(e)(7), is also delegated. The authority to withhold return information upon a determination that disclosure would seriously impair Federal tax administration is also delegated. These authorities are also delegated to the Taxpayer Ombudsman. The authority delegated in this paragraph to disclose or authorize the disclosure of returns or return information may be redelegated to Internal Revenue Service employees and employees of the Office of Chief Counsel to the extent necessary within the exercise of their official duties. In the event a disclosure of return information would seriously impair Federal tax administration, the decision to withhold such return information will be referred to officials not lower than Chiefs, Special Procedures function; Group Managers (or their equivalent); Chiefs, Appeals Offices; Chiefs, Criminal Investigation Branch; Problem Resolution Officers and Disclosure Officers.

(c) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the Department of Justice including United States attorneys, in a matter involving tax administration, subject to the conditions prescribed in IRC 6103(h)(2), the Treasury Regulations thereunder, and (h)(3)(A). The authority delegated in this paragraph may be redelegated not lower than Chiefs, Special Procedures function; and Group Managers (or their equivalent including Disclosure Officers). The authority delegated in this paragraph to Chief Counsel employees may be redelegated not lower than Chiefs, Appeals Offices; and to attorneys of the Office of Chief Counsel directly involved in such matters. (See paragraph (17) below.)

(d) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the Department of Treasury, as specified in IRC 6103(l)(4)(B) or, upon written requests to employees and other persons specified in IRC 6103(l)(4)(A) for use in personnel or claimant representative matters, and to make relevancy and materiality determinations as provided in section 6103(l)(4)(A), subject to the conditions prescribed in IRC 6103(l)4). The authority delegated in this paragraph may be redelegated only to Assistant Division Directors (or equivalent level position); Assistant Regional Commissioners; Regional Directors of Appeals; Assistant Regional Inspectors; Regional Chiefs, Personnel Branch; Assistant District and Service Center Directors; the Assistant Director, Austin Compliance Center; Division Chiefs; National Office Branch Chiefs, Internal Security Division; Assistant Regional Counsels (GLS); and to attorneys of the Office of Chief Counsel and Inspectors directly involved in such matters. (See paragraph 13(e).).

(e) To disclose or, in specific instances, authorize the disclosure of returns or return information to the extent necessary in connection with contractual procurement by the Service or Office of the Chief Counsel of equipment or other property or services, subject to the conditions prescribed in IRC 6103(n) and the Treasury Regulations thereunder. The authority delegated in this paragraph may be redelegated only to Assistant Division Directors (or equivalent level position); Assistant Regional Commissioners; Regional Directors of Appeals; Assistant Regional Inspectors; Assistant District and Service Center Directors; Assistant Director, Austin Compliance Center; Division Chiefs; Deputy Assistant Chief Counsels; Assistant Regional Counsel; and Disclosure Officers.

(f) To disclose, or in specific instances, authorize the disclosure of return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) or to disclose return information under circumstances involving a threat or other imminent danger of death or other physical injury, which is directed against the President of other government official, to the U.S. Secret Service, subject to the conditions prescribed in IRC 6103(i)(3). The authority delegated to this paragraph is also delegated to Assistant District and Service Center Directors and the Assistant Director, Austin Compliance Center. This does not limit the authority granted in paragraph 6(d) of this order.

(g) To determine whether a disclosure or standards used or to be used for selection of returns for examination, or data used or to be used for determining such standards will seriously impair assessment, collection or enforcement under the internal revenue laws pursuant to IRC 6103(b)(2). The authority delegated in this paragraph may be redelegated to Disclosure Officers.

(2) Deputy Chief Inspector; Deputy Assistant Commissioners; Deputy Assistant Chief Information Officers; Division Directors (or equivalent level position); Regional Commissioners; Regional Inspectors; District and Service Center Directors; the Director, Austin Compliance Center; Director, Martinsburg Computing Center; and Director, Detroit Computing Center are authorized to determine whether a disclosure of returns or return information in a Federal or State judicial or administrative proceeding pertaining to tax administration would identify a confidential informant or seriously impair a civil or criminal tax investigation, subject to the conditions prescribed in IRC 6103(h)(4). The authority delegated in this paragraph may not be redelegated.

(3) Director, Office of Disclosure; Regional Commissioners; Assistant Commissioner (International); District

and Service Center Directors; and the Director, Austin Compliance Center are authorized.

(a) To furnish an affirmative or negative response to a written inquiry from an attorney of the Department of Justice (including a United States Attorney) involved in a judicial proceeding pertaining to tax administration, or any person (or his/her legal representative) who is party to such proceeding, as to whether a prospective juror has or has not been the subject of any audit or other tax investigation by the Internal Revenue Service, subject to the conditions prescribed in IRC 6103(h)(5). The authority delegated in this paragraph may be redelegated only to Assistant District and Service Center Directors; Assistant Director, Austin Compliance Center; Division Chiefs; and Disclosure Officers.

(b) To disclose or, in specific instances, authorize the disclosure of:

(i) Accepted offers-in-compromise to members of the general public, subject to the conditions prescribed in IRC 6103(k)(1).

(ii) The amount of an outstanding obligation secured by a lien, notice of which has been filed pursuant to section 6323(f), to any person who furnishes satisfactory written evidence establishing a right in or intent to obtain a right in property subject to such lien, subject to the conditions prescribed in IRC 6103(k)(2). The authority to disclose or, in specific instances, authorize the disclosure of the amount of such outstanding obligations is also delegated to the Deputy Assistant Commissioner (Collection).

(iii) Taxpayer identity information with respect to any income tax return preparer and information as to whether any penalty has been assessed against such preparer to officers and employees of any agency charged under State or local law with the regulation of such preparers, upon written request and subject to the conditions prescribed in IRC 6103(k)(5).

(iv) Returns or return information with respect to taxes imposed by IRC chapters 2, 21, and 24 to the Social Security Administration, upon written request and subject to the conditions prescribed in IRC 6103(l)(1)(A).

(v) Returns or return information with respect to taxes imposed by IRC chapter 22 to the Railroad Retirement Board, upon written request and subject to the conditions prescribed in IRC 6103(l)(1)(C).

(vi) Returns or return information with respect to taxes imposed by IRC subtitle E (relating to taxes on alcohol, tobacco and firearms) to officers and employees of the Bureau of Alcohol, Tobacco and Firearms, upon written request and pursuant to IRC 6103(o)(1).

The authority delegated in subparagraphs (iv) and (v) is also delegated to the Associate Chief Counsel (Technical). The authority delegated in this paragraph may be redelegated only to Assistant District and Service Center Directors; Assistant Director, Austin Compliance Center; Division Chiefs; and Disclosure Officers. In additon, the authority delegated in subparagraph (i) may also be redelegated only to Chiefs, Special Procedures function; Special Procedures function Advisor Reviewers; and Group Managers (or their equivalent). The authority delegated in subparagraph (ii) may also be redelegated only to Chiefs, Special Procedures function; Special Procedures function Advisor Reviewers; Group Managers (or their equivalent); and Revenue Officers. The authority delegated in subparagraph (iv) may be redelegated not lower than Branch Chief.

(4) Regional Commissioners; Assistant Commissioner (International); Director, Office fo Disclosure; District and Service Center Directors; and the Director, Austin Compliance Center are authorized to disclose or, in specific instances, authorize the disclosure of returns or return information to designated State tax officials, upon written request by the head of a State tax agency, for the purpose of and to the extent necessary in the administration of State tax laws, pursuant to the provisons of IRC 6103(d) and subject to the conditions prescribed in IRC 6103(h)(4) and (p)(8). The authority to withhold return information pursuant to IRC 6103(d) and (h)(4) upon a determination that such disclosures would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph does not extend to the entry into Federal/State Agreements on the Coordination of Tax Administration. The authority delegated in this paragraph may be redelegated to Disclosure Officers, Disclosure Specialists and to any supervisory level deemed appropriate, but such redelegation shall not extend to the authority to withhold return information.

(5) The Regional Commissioners; Assistant Commissioner (International); District and Service Center Directors; Director, Austin Compliance Center; and Director, Martinsburg Computing Center are authorized to disclose or, in specific instances, authorize the dislcosure of returns or return information pursuant to Federal/State Agreements on the Coordination of Tax Administration entered into between the head of any State tax agency and the Commissioner of Internal Revenue, pursuant to the provisions of IRC 6103(d) and subject to the conditions prescribed in IRC 6103(h)(4) and (p)(8). The authority to withhold return information pursuant to IRC 6103(d) and (h)(4) upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigations is also delegated. The authority delegated in this paragraph may be redelegated to Disclosure Officers, Disclosure Specialists and to any supervisory level deemed appropriate, but such redelegation shall not extend to the authority to withhold return information.

(6) The Director, Office of Disclosure, is authorized;

(a) To disclose or, in specific instances, authorize the disclosure of returns and return information to Congressional committees and other persons, upon written request and subject to the conditions prescribed in IRC 6103(f). The authority delegated in this paragraph is also delegated to the Assistant to the Commissioner (Legislative Liaison), Taxpayer Ombudsman, and Assistant Commissioner (International). The authority delegated in this paragraph may not be redelegated.

(b) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of a Federal agency pursuant to an *ex parte* order by a Federal District Court judge or magistrate when needed for use in the enforcement of a Federal criminal statute (not involving tax administration), or to locate a fugitive from justice subject to the conditions prescribed in IRC 6103(l)(1) or (i)(5) and the Treasury Regulations thereunder. The authority to withhold any return or return information, pursuant to IRC 6103(i)(6), upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph is also delegated to Assistant Commissioner (International); Regional Commissioners; Assistant District and Service Center Directors; and the Assistant Director, Austin Compliance Center. This authority may not be redelegated.

(c) To disclose or, in specific instances, authorize the disclosure of return information (other than taxpayer return information) to officers and

employees of a Federal agency upon written request by the head of such agency or the Inspector General thereof, or in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, when needed for use in the enforcement of a Federal criminal statute (not involving tax administration), subject to the conditions prescribed in IRC 6103(i)(2). The authority to withhold return information (other than taxpayer return information), pursuant to IRC 6103(i)(6), upon a determination that such disclosure would identify a confidential informant, or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant District and Service Center Directors; Assistant Director Austin Compliance Center; and Assistant Commissioner (International). This authority may not be redelegated.

(d) To disclose or, in specific instances, authorize the disclosure of:

(i) return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency pursuant to IRC 6103(i)(3)(A);

(ii) return information to the extent necessary to apprise appropriate officers or employees of a Federal or State law enforcement agency of circumstances involving an imminent danger of death or physical injury to any individual pursuant to IRC 6103(i)(3)(B)(i);

(iii) return information to the extent necessary to apprise appropriate officers or employees of a Federal law enforcement agency of circumstances involving the imminent flight of an individual from Federal prosecution pursuant to IRC 6103(i)(3)(B)(ii);

With respect to subparagraph (i), the authority to withhold any return information pursuant to IRC 6103(i)(6) upon a determination that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation is also delegated.

With respect to subparagraph (i), the authority is also delegated to Special Agents and Internal Security Inspectors. The authority delegated in this paragraph is also delegated to Assistant Commissioner (International); Regional Commissioner; Assistant District and Service Center Directors; and the Assistant Director, Austin Compliance Center. This authority is in addition to the authority previously delegated in paragraph (1)(f).

(e) To notify the Attorney General or his delegate or the head of a Federal agency that certain returns or return information obtained pursuant to IRC 6103(i) (1), (2) or (3)(A) shall not be admitted into evidence under IRC 6103(i)(4) (A)(i) or (B) upon a determination, in accordance with IRC 6103(i)(4)(C), that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation. The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant Commisssioner (International); Assistant District and Service Center Directors; and the Assistant Director, Austin Compliance Center. This authority may not be redelegated.

(f) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the General Accounting Office, upon written request by the Comptroller General of the United States and subject to the conditions prescribed in IRC 6103(i)(7). The authority to withhold any return or return information, pursuant to IRC 6103(i)(6), upon a determination that such disclosure would impair any civil or criminal tax investigation or reveal the identity of a confidential informant is also delegated. The authority delegated in this paragaph may not be redelegated.

(g) To disclose or, in specific instances, authorize the disclosure of:

(i) the mailing address of taxpayer to officers and employees of an agency when needed in connection with a Federal claim against such taxpayer, upon written request and subject to the conditions prescribed in IRC 6103(m)(2). The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant Commissioner (International); Assistant District and Servcie Center Directors; and the Assistant Director, Austin Compliance Center. Upon approval of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Deputy Assistant Commissioner (Returns Processing); Director, Returns Processing and Accounting Division; Deputy Assistant Chief Information Officer (Information System Management) and Director, Martinsburg Computing Center. The authority delegated in this paragraph may be redelegated only as set forth below. The authority delegated to the Regional Commissioners; Director, Martinsburg Computing Center, Assistant District and Service Center Directors; and the Assistant Director, Austin Compliance Center may be redelegated to the Disclosure Officer, Martinsburg Computing Center and Regional, District and Servcie Center and Austin Compliance Center Disclosure Officers. The authority delegated in this order does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(ii) whether or not an applicant for a loan under an included Federal loan program has a tax delinquent account to the head of the Federal agency administering such program, upon written request and subject to the conditions perscribed in IRC 6103(l)(3). The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant Commissioner (international); Assistant District and Service Center Director, and the Assistant Director, Austin Compliance Center. Upon approval of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Deputy Assistant Commissioner (Returns Processing); Director, Returns Processing and Accounting Division; Deputy Assistant Chief Information Officer (Information Systems Management) and Director, Martinsburg Computing Center. The authority delegated in this paragraph may be redelegated only as set forth below. The authority delegated to the Regional Commissioners; Director, Martinsburg Computing Center, Assistant District and Service Center Directors, and the Assistant Director, Austin Compliance Center may be redelegated only to the Disclosure Officer Martinsburg Computing Center, Service Center Directors, and the Director, Austin Compliance Center may not be redelegated. The authority delegated in this paragraph does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(h) To disclose or, in specific instances, authorize the disclosure of the mailing address of taxpayers to officers and employees of the National Institute

for Occupational Safety and Health, upon written request and subject to the conditions prescribed in IRC 6103(m)(3). Upon approval by the Director, Office of Disclosure, or his/her delegate of a contactual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Deputy Assistant Chief Information Officer (Information Systems Management); Director, Tax Systems Division; Director, Martinsburg Computing Center, Service Center Directors, and the Director, Austin Compliance Center. The authority delegated to the Deputy Assistant Chief Information Officer (Information Systems Management); Director, Tax Systems Division; Director, Martinsburg Computing Center, Service Center Director, and the Director Austin Compliance Center may not be redelegated. The authority delegated in this paragaph does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(i) To disclose, or in specific instances, authorize the disclosure of the mailing address of any taxpayer who has defaulted on a loan:

(i) made from the student loan fund established under part B or E of title IV of the Higher Education Act of 1965 or a loan made to a student at an institute of higher education pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962, to the Secretary of Education upon written request and subject to the conditions prescribed in IRC 6103(m)(4).

(ii) made under part C of title VII of the Public Health Service Act or under subpart II of part B of title VIII of such Act to the Secretary of Health and Human Services upon written request and subject to the conditions prescribed in IRC 6103(m)(5).

Upon approval by the Director, Office of Disclosure, or his/her delegate of a contractual agreement for such disclosures, the authority delegated in subparagraphs (i) and (ii) is also delegated to the following officials: Deputy Chief Information Officer (Information Systems Management); Director, Tax Systems Division; Director, Martinsburg Computing Center, and Service Center Director; and the Director, Austin Complaince Center. This authority may not be redelegated. The authority delegated in this paragraph does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(j) To disclose or, in specific instances, authorize the disclosure of the mailing address of taxpayers to officers and employees of the Department of Health and Human Services' Blood Donor Locator Service, upon written request and subject to the conditions prescribed in IRC 6103(m)(6). This authority may only be redelegated to the Chief, Disclosure Operations Section.

(k) To disclose or, in specific instances, authorize the disclosure, upon written request, of returns filed in accordance with IRC 60501, to officers and employees of any Federal agency whose official duties require such disclosure to administor Federal criminal statutes not related to tax administration, pursuant to the provisions of IRC 6103(i)(6). The authority delegated in this paragraph also is delegated to the Assistant Commissioner (Criminal Investigation); District Directors and Assistants; Special Assistant for Financial Enforcement, Detroit Computing Center, and Chiefs, Criminal Investigation Division. This authority may not be redelegated, and shall expire November 17, 1990, the expiration of the disclosure authority under IRC 6103(i)(8).

(l) For disclosure relate to title 31 CFR part 103 see Delegation Order 143, as revised, paragraph 5.

(7) The Assistant Commissioner (Returns Processing) is authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns or return information for statistical use to officers and employees of the Department of Commerce, Bureau of Census, upon the written request of the Secretary of Commerce or to officers and employees of the Department of the Treasury, subject to the conditions prescribed in IRC 6103(i)(1)(A) and the Treasury regulations thereunder and (j)(3). The authority delegated in this paragraph may be redelegated only to the Director, Statistics of Income Division.

(b) To disclose or, in specific instances, authorize the disclosure of return information for statistical use to officers and employees of the Department of Commerce, Bureau of Economic Analysis, upon the written request of the Secretary of Commerce, or to officers and employees of the Federal Trade Commission, upon written request of the Chairman, subject to the conditions prescribed in IRC 6103(j)(1)(B) and (j)(2) and the Treasury regulations thereunder. The authority delegated in this paragraph may be redelegated only to the Director, Statistics of Income Division.

(8) The Director, Public Affairs Division; Regional Commissioners; Assistant Commissioner (International); and District Directors are authorized to disclose or, in specific instances, authorize the disclosure of taxpayers' names and the city, state and zip code of their mailing addresses to the press and other media for purposes of notifying persons entitled to undelivered tax refunds, subject to the conditions prescribed in IRC 6103(m)(1). The authority delegated in this paragraph may be redelegated to Assistant Directors and Public Affairs Officers.

(9) The Assistant Commissioner (Examination) is authorized:

(a) Upon written request of the President, to disclose, or in specific instances, authorize the disclosure of return information (other than return information that is adverse to the taxpayer) of an individual who is under consideration for appointments to a position in the executive or judicial branch of the Federal Government to the authorized representative of the Executive Office of the President or to the Federal Bureau of Investigation on behalf of the President, subject to the conditions prescribed in IRC 6103 (g)(2) and (g)(4). Authority is also delegated to disclose or, in specific instances, authorize the disclosure of return information with respect to the categories of individuals discussed above to the heads of Federal agencies upon written request, or the Federal Bureau of Investigation on behalf of and upon the written request of such agency heads, subject to the conditions described in IRC 6103 (g)(2) and (g)(4). Upon receipt of any request for return information under IRC 6103(g)(2), authority to notify the individuals with respect to whom the request has been made is also delegated. The authority delegated in this paragraph may be redelegated but not lower than:

(i) Deputy Assistant Commissioner (Examination), in the case of requests by or on behalf of the President where the return information to be disclosed is not adverse to the taxpayer;

(ii) Director, Office of Disclosure, in the case of requests by or on behalf of the heads of Federal agencies where the return information to be disclosed is adverse to the taxpayer;

(iii) Director, Office of Disclosure, in the case of requests by or on behalf of the heads of Federal agencies where the return information to be disclosed is not adverse to the taxpayer; and

(iv) Director, Office of Disclosure, concerning the notification of individuals with respect to whom a request has been made.

(b) To make the determination that an agency, body or commission or the General Accounting Office has failed to or does not meet the requirements of IRC 6103(p)(4). Subject to the

administrative review applicable to State tax agencies described in IRC 6103(p)(7), authority to withhold returns and return information from any agency, body or commission or the General Accounting Office until a determination is made that the requirements of IRC 6103(p)(4) have been or will be met is also delegated. The authority delegated in this paragraph may not be redelegated.

(10) The Deputy Assistant Commissioner (Employee Plans and Exempt Organizations); Director, Office of Disclosure; Regional Commissioners; District Directors of Key Districts for Employee Plans and Exempt Organizations matters; Service Center Directors; Director, Austin Compliance Center; Director, Martinsburg Computing Center; and Director, Detroit Computing Center are authorized to disclose, or in specific instances, authorize the disclosure of:

(a) Statements, notifications, reports, or other return information described in IRC 6057(d) to officers and employees of the Social Security Administration for the administration of section 1131 of the Social Security Act, upon written request and subject to the conditions prescribed in IRC 6103(l)(1)(B). The authority delegated in this paragraph to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) may be redelegated, but not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division. The authority delegated in this paragraph to Regional Commissioners may be redelegated not lower than Assistant Regional Commissioner. The authority delegated in this paragraph to the District Directors of Key Districts may be redelegated, but not below Chiefs, Technical Review Staffs, Employee Plans and Exempt Organizations Division. The authority delegated in this paragraph to Service Center Directors and the Director, Austin Compliance Center may be (redelegated, but not lower than Section Chiefs (or their equivalent). The authority delegated in this paragraph to the Director, Martinsburg Computing Center and Director, Detroit Computing Center may be redelegated, but not lower than Branch Chiefs (or their equivalent).

(b) Returns or return information, including compensation information, to officers and employees of the Department of Labor and Pension Benefit Guaranty Corporation for the administration of titles I and IV of the Employee Retirement Income Security Act of 1974, upon written request and subject to the conditions prescribed in IRC 6103(1)(2) and the Treasury regulations thereunder. The returns or return information which may be disclosed under this paragraph include:

(i) Upon specific written request, the information specified in 26 CFR 301.6103(i)(2)–1(a), 2(a), 3(b)(1), and 3(b)(2);

(ii) Upon receipt by the Commissioner of Internal Revenue of an annual written request, the information specified in 26 CFR 301.6103(i)(2)–3(a);

(iii) Upon receipt by the Commissioner of Internal Revenue of a general written request, information specified in 26 CFR 301.6103(i)(2)–3(d).

The authority delegated in this paragraph to the Deputy Assistant Commissioner (Employee Plans, and Exempt Organizations) may be redelegated, but not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division. The authority delegated in this paragraph to Regional Commissioners may be redelegated not lower than Assistant Regional Commissioner. The authority delegated in this paragraph to District Directors of the Key Districts may be redelegated, but not lower than Employee Plans Specialist. The authority delegated in this paragraph to Service Center Directors and the Director, Austin Compliance Center may be redelegated, but not lower than Section Chiefs (or their equivalent). The authority delegated in this paragraph to the Director, Martinsburg Computing Center and Director, Detroit Computing Center may be redelegated, but not lower than Branch Chiefs (or their equivalent). The authority delegated in this paragraph is also delegated to the National Director of Appeals; Regional Director of Appeals; Chief, Appeals Office; and Associate Chief, Appeals Office and may not be redelegated.

(11) The Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) is authorized to disclose or, in specific instances, authorize the disclosure of drafts of proposed exemptions or of proposed denials of exemption requests, denial letters, and copies of information submitted by taxpayers requesting exemptions to the proper officers of the Department of Labor for consultation and coordination as required by IRC 4975(c)(2). The authority delegated in this paragraph may be redelegated not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division.

(12) Disclosure of information to appropriate Federal, State or local law enforcement officials may be made by Internal Revenue Service employees, and employees of the Office of Chief Counsel, concerning non-tax crimes which do not involve return information or the income or other financial information of an individual or entity, in accordance with the provisions of Chapter (35)00 of the Disclosure of Official Information Handbook, IRM 1272. In situations where there is a question as to whether the information to be disclosed is or is not return information, such as those described in IRM 1272, the Director, Office of Disclosure; Regional Commissioners; Assistant Commissioner (International); Assistant District and Service Center Directors; and the Assistant Director, Austin Compliance Center are authorized to approve or deny such requests for disclosure. The Director, Office of Disclosure, should act in all such matters only after coordination with the office of the Assistant Chief Counsel (Disclosure Litigation). Regional Commissioners; Assistant Commissioner (International); Assistant District and Service Center Directors; and the Assistant Director Austin Compliance Center should act in all such matters only after coordination with the Associate Chief Counsel (International), Office of Regional or District Counsel, as appropriate. The authority delegated in this paragraph may not be redelegated.

(13) The authority vested in the Commissioner of Internal Revenue by 26 CFR 301.9000–1 is delegated by this Order to the Senior Deputy Commissioner. It is also delegated to the following officials to the extent described below. (No authorization is needed in cases referred to the Department of Justice which are discussed in paragraph (1)(c) where the testimony or disclosure is made on behalf of the government.]

(a) Regional Commissioners are authorized to determine whether employees of the Internal Revenue Service assigned to their regions, including employees of the Office of the Regional Counsel, but not including employees of the Regional Inspector, will be permitted to testify or produce Service records because of a request or demand for the disclosure of such records or information. The Regional Commissioners should act in all such matters only after coordination with the Office of Regional Counsel. However, the personal testimony of a Regional Commissioner shall require authorization in accordance with (b) below. The authority delegated in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal

Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4, which provides the authority for disclosure of Internal Revenue Service records and information in tax court proceedings.)

(b) The Deputy Assistant Commissioner (Examination) is authorized to determine whether Regional Commissioners, employees of the Internal Revenue Service assigned to the National Office, including employees of the Office of Chief Counsel, and employees assigned to Regional Inspectors will be permitted to testify or produce Service records because of a request or demand for the disclosure of such records or information. The Deputy Assistant Commissioner (Examination) should act in all such matters only after coordination with the office of the Assistant Chief Counsel (Disclosure Litigation). The authority delegated in this paragraph may not be redelegated. (See (d) and (e) below). The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4.)

(c) The Assistant Commissioner (International), District Directors, Service Center Directors and the Director, Austin Compliance Center are authorized to determine whether officers and employees of the Internal Revenue Service assigned to their office, district of service center or the Austin Compliance Center (including regional appeals employees located in the district) will be permitted to testify or produce Service records because of a request or demand for disclosure of such records or information. For purposes of this paragraph, employees of the Office of the District Counsel come under the authority of the District Director. Employees of the Regional Inspector are covered under paragraph (b), above. The District and Service Center Directors and the Director, Austin Compliance Center should act in all such matters only after coordination with the Office of the District Counsel. The Assistant Commissioner (International) should act in all such matters only after coordination with the Associate Chief Counsel (International). However, the personal testimony of a District Director or Service Center Director or Director, Austin Compliance Center shall require authorization in accordance with (a) above. The authority in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4.)

(d) The authority delegated in paragraphs (a), (b) and (c) shall not extend to testimony or the production of Service records because of a request or demand for the disclosure of such records or information:

(i) By a Congressional Committee;

(ii) Involving a disclosure to correct a misstatement of fact pursuant to IRC 6103(k)(3).

(e) The Assistant Chief Counsel (General Legal Services), and Assistant Regional Counsel (GLS), with the concurrence of the Assistant Chief Counsel (General Legal Services), are authorized to determine whether officers and employees of the Internal Revenue Service, including employees of the Office of Chief Counsel, will be permitted to testify or produce Internal Revenue records or information because of a request or demand for the disclosure of such records or information, if the request or demand is made in connection with personnel or claimant representative matters under the jurisdiction of the office of the Assistant Chief Counsel (General Legal Services) for which they have been delegated authority to disclose returns or return information as described in paragraph 1(d). The authority delegated above in this paragraph to the Assistant Chief Counsel (General Legal Services), may be redelegated only to the Deputy Assistant Chief Counsel (General Legal Services), and to Branch Chiefs and attorneys of the Office of Chief Counsel directly involved in such matters. This paragraph does not limit the authority granted in (a), (b), or (c) above.

(f) The authority delegated to Regional Commissioners, District and Service Center Directors and the Director, Austin Compliance Center in paragraphs (a) and (c) shall not extend to testimony or the production of Service records because of a request or demand for the disclosure of such records or information which may require a disclosure to a competent authority under a tax convention, whether or not such records or information were previously disclosed pursuant to such convention. The Deputy Assistant Commissioner (Examination) should act in all such matters only after authorization by the appropriate United States competent authority. (See Delegation Order 114, as revised).

(g) In addition to paragraphs (a), (b), (c) and (e) above, authority is further delegated to Assistant Regional Commissioners (Resources Management); Regional Inspectors; Regional and District Counsel; District Service Center Directors; Director, Austin Compliance Center, and Director, Detroit Computing Center, to release or, in specific instances, authorize the release of information from the leave and payroll records of employees under their jurisdiction, and to the Director, National Office Resources Management Division, to release or, in specific instances, authorize the release of information from the leave and payroll records of all employees of the National Office, when such information is requested or subpoenaed in connection with private litigation, upon determination that release of the information would not be detrimental to the Internal Revenue Service. This delegation does not include authority to release or authorize the release of information contained in official personnel folders, which is covered by IRM 0293. When any uncertainty exists as to the availability of furnishing leave and pay information in a particular case, the matter should be referred to the National Office, Attention: HR:N:H, with a complete report of the circumstances. The authority delegated in this paragraph may not be redelegated.

The provisions of this paragraph (13(a)–(g)) are limited to the authorization of testimony or the production of documents pursuant to a request or demand as referred to in paragraphs (d)(1)(i) and (ii) of 26 CFR 301.9000–1 and do not extend to or affect other disclosure authority previously delegated in paragraphs (6) and (9) of this order. Furthermore, in instances where it is anticipated that the testimony or production of Service records by a Chief Counsel attorney will involve matters which may fall within the attorney-client privilege, the determination of whether to waive the privilege, as well as the authority to authorize the testimony or production shall lie with the Deputy Assistant Commissioner (Examination) who will act in these matters only after coordination with the office of the Assistant Chief Counsel (Disclosure Litigation). In instances involving Regional or District Counsel attorneys and the attorney-client privilege, authority shall lie with the Regional Commissioner, who will act in these matters only after coordination with the Regional Counsel.

(14) The Deputy Assistant Chief Information Officer (Information

Systems Management); Regional Commissioners; Assistant Commissioner (International); Director, Tax Systems Division; Director, Martinsburg Computing Center; Service Center Directors; and the Director, Austin Compliance Center are authorized to disclose or, in specific instances, authorize the disclosure of individual master file information to the head of a Federal, State or local child support enforcement agency or an authorized supervisory official under a contractual agreement entered into pursuant to Delegation Order 100, as revised, Revenue Procedure 78–10, and subject to the conditions prescribed in IRC 6103(l)(6)(A)(i). Such contractual agreement should be entered into only after coordination with the Director, Office of Disclosure. The authority delegated in this paragraph may be re-delegated to any supervisory level deemed appropriate.

(15) The Deputy Assistant Commissioner (Examination); Regional Commissioners; Assistant Commissioner (International); Service Center Directors; and the Director, Austin Compliance Center are authorized to disclose or, in specific instances, authorize the disclosure of return information to the head of a Federal, State or local child support enforcement agency or an authorized supervisory official under a contractual agreement entered into pursuant to Delegation Order 100, as revised, Revenue Procedure 78–10, and subject to the conditions prescribed in IRC 6103(l)(6)(A)(ii). Such contractual agreement should be entered into only after coordination with the Director, Office of Disclosure. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate.

(16) The Deputy Assistant Commissioner (Examination); Regional Commissioners; Service Center Directors; the Director, Austin Compliance Center; Director, Martinsburg Computing Center; and Director, Detroit Computing Center are authorized to disclose or, in specific instances, authorize the disclosure of information returns filed pursuant to part III of subchapter A of IRC chapter 61 to designated personnel of the Social Security Administration for the purpose of carrying out an effective return processing program in accordance with section 232 of the Social Security Act and pursuant to IRC 6103(l)(5). The authority delegated in this paragraph may not be redelegated.

(17) The Senior Deputy Commissioner, Associate Chief Counsel (International), and Associate Chief Counsel (Litigation) are authorized to disclose or, in specific instances, authorize the disclosure of returns and return information to the designated officers and employees of the Department of Justice pursuant to a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General in a matter involving tax administration, subject to the conditions prescribed in IRC 6103(h)(3)(B). The authority delegated in this paragraph may not be redelegated.

(18) The Assistant Chief Information Officer (Information Systems Management); Assistant Commissioners (Returns Processing); Director, Office of Disclosure; Service Center Directors; Director, Austin Compliance Center, and Director, Martinsburg Computing Center are authorized upon written request to disclose, or in specific instances, authorize the disclosure of return information pursuant to IRC 6103(h)(6) with respect to the address and status of an individual as a nonresident alien, citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board for purposes of carrying out responsibilities for withholding tax from social security benefits under IRC 1441.

(19) At the request of the Commissioner of Internal Revenue and with the approval of the Joint Committee on Taxation, the following officials may disclose information with respect to a specific taxpayer pursuant to IRC 6103(k)(3): Regional Commissioners; Assistant Commissioner (International); District and Service Center Directors; Director, Austin Compliance Center; Assistant Commissioner (Collection); Assistant Commissioner (Criminal Investigation); Assistant Commissioner (Employee Plans and Exempt Organizations); Director, Office of Disclosure; any individual who is specifically designated by the Commissioner of Internal Revenue. The authority delegated in this paragraph may not be redelegated.

(20) Director, Martinsburg Computing Center; and Director, Office of Disclosure, are authorized to disclose or, in specific instances, to authorize the disclosure of return information from the Information Returns Master File under a contractual agreement entered into pursuant to Delegation Order No. 100, as revised, and the applicable Revenue Procedure to Federal, State, and local agencies administering certain welfare programs, subject to the conditions of IRC 6103(l)(7). Such contractual agreements may be entered into only after coordination with the Office of Disclosure. The authority in this paragraph may be redelegated to any supervisory level deemed appropriate, but only by the officials named above.

(21) The Assistant Commissioner (Returns Processing) and the Director, Office of Disclosure, are authorized to disclose or, in specific instances, to authorize the disclosure of available filing status and taxpayer identity information from the Individual Master File to the Commissioner of Social Security under a contractual agreement entered into pursuant to Delegation Order No. 100, as revised, and subject to the conditions of IRC 6103(l)(12). Such contractual agreements may be entered into only after coordination with the Office of Disclosure. The authority in this paragraph may be redelegated only to the Director, Returns Processing and Accounting Division.

(22) Delegation Order No. 156 (Rev. 11) and Chief Counsel Directives Manual (30)330, effective September 27, 1989 are superseded.

Dated May 25, 1990.

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 90–15453 Filed 7–3–90; 8:45 am]

BILLING CODE 4830–01–M

Office of Thrift Supervision

Appointment of Conservator; First Atlantic Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (A) and (B) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Atlantic Federal Savings Association, South Plainfield, New Jersey California ("Association") on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–15579 Filed 7–3–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Conservator; Imperial Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989,

the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Imperial Federal Savings Association, San Diego, California on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15580 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Conservator; Southern Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Southern Federal Savings Bank, Gulfport Mississippi ("Association") on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15581 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Alpine Savings; A Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Alpine Savings; a Federal Savings and Loan Association Steamboat Springs, Colorado ("Association") Docket No. 8641, on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15547 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver, Anchor Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Anchor Federal Savings and Loan Association, Kansas City, Kansas ("Association"), on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15548 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Blue Valley Federal Savings and Loan Association, Kansas City, MO

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Blue Valley Federal Savings and Loan Association, Kansas City, Missouri ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on June 15, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15549 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Cass Federal Savings and Loan Association of St. Louis

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Cass Federal Savings and Loan Association of St. Louis, Florissant, Missouri ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15550 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Century Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Century Federal Savings Bank, Trenton, Tennessee ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 15, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15551 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Central Savings and Loan Association, F.A.

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator from Central Savings and Loan Association, F.A., New Orleans, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15552 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Equitable Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Equitable Federal Savings and Loan Association,

Columbus, Nebraska ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15553 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Family Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Family Federal Savings and Loan Association, Shreveport, Louisiana ("Association"), on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15554 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; First Atlantic Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Atlantic Savings and Loan Association, South Plainfield, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15555 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; First Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings and Loan Association, Summerville, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15556 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver, 1st Federal Savings and Loan Association of Estherville and Emmetsburg

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Blue Valley Federal Savings and Loan Association, Kansas City, Missouri ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on June 15, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15546 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Association of York, Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings Association of York, York, Nebraska ("Association"), on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15557 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver, First Garland Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Garland Federal Savings and Loan Association, Garland, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15558 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; First Savings of Americus, a FS & LA

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Savings of Americus, A FS & LA, Americus, Georgia ("Association"), on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15559 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; First Savings of Laredo, F.A.

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial

Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for First Savings of Laredo, F.A. Laredo, Texas, with the Resolution Trust Corporation as sole Receiver for the Association on June 15, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15560 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Frontier Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Frontier Federal Savings Association, Walla Walla, Washington (Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington.

[FR Doc. 90-15561 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Home Federal Savings & Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Home Federal Savings & Loan Association, Memphis, Tennessee, OTS docket No. 0664, with the Resolution Trust Corporation as sole Receiver for the Association on June 29, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington.

Executive Secretary.

[FR Doc. 90-15562 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Home Savings & Loan Association, F.A.

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Home Savings & Loan Association, F.A., New Orleans, Louisiana ("Association") on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington.

Executive Secretary.

[FR Doc. 90-15563 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Huntington Federal Savings & Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Huntinging Federal Savings & Loan Association, Huntington Beach, California ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington.

Executive Secretary.

[FR Doc. 90-15564 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Imperial Savings Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Imperial Savings Association, San Diego, California ("Association"), OTS Docket No. 1761, with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15565 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Landmark Savings Bank, F.S.B.

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933 as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Landmark Savings Bank, F.S.B., Hot Springs, Arkansas, Docket No. 3115, on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15566 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Metropolitan Financial Federal Savings and Loan Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933 as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Metropolitan Financial Federal Savings and Loan Association, Dallas, Texas, Docket No. 8660, on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15567 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Midwestern Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933 as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Midwestern Savings Association,

Macomb, Illinois, Docket No. 0354, on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15568 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver, Occidental Nebraska Savings Bank, F.S.B.

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Occidental Nebraska Savings Bank, F.S.B., Omaha, Nebraska ("Association"), on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15569 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver, Peninsula Federal Savings Association.

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Peninsula Federal Savings Association, South San Francisco, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15570 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver, Rocky Mountain Savings, a Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Rocky Mountain Savings, A Federal Savings Bank, Woodland Park, Colorado, OTS Docket No. 7782, with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15571 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Southern Federal Bank for Savings

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southern Federal Bank for Savings, Gulfport, Mississippi, Docket No. 7500, on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15572 Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Sun Savings & Loan Association

Notice is hereby given that pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Sun Savings and Loan Association, Parker, Colorado ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15573- Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; TaylorBanc Federal Savings & Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owner's Loan Act of 1933, as amended by 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for TaylorBanc Federal Savings and Loan Association, TaylorBanc, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15574- Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Unifirst Bank for Savings, a Federal Savings & Loan Association

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Unifirst Bank for Savings, A Federal Savings and Loan Association, Jackson, Mississippi ("Association"), on June 15, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-15575- Filed 7-3-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Unipoint Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Unipoint Federal Savings Bank, Trumann, Arkansas ("Association"), on June 22, 1990.

Dated: June 29, 1990.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90-15576 Filed 7-3-90; 8:45 am]
BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Universal Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owner' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Universal Federal Savings Association, Houston, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90-15577 Filed 7-3-90; 8:45 am]
BILLING CODE 6720-01-M

Replacement of Conservator With a Receiver; Wilshire Federal Savings & Loan Association

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owner' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Wilshire Federal Savings and Loan Association, Los Angeles, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 22, 1990.

Dated: June 29, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90-15578 Filed 7-3-90; 8:45 am]
BILLING CODE 6720-01-M

[AC-36; OTS No. 5698]

First Federal Savings & Loan Associate of Macon County Decatur, IL; Final Action Approval of Voluntary Supervisory Conversion Application

Date: June 15, 1990.

Notice is here by given that the Director noted that on June 14, 1990, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of First Federal Savings and Loan Association of Macon County, Decatur, Illinois, for permission to convert to the stock form organization pursuant to a voluntary supervisory conversion, and the acquisition of all the conversion stock by SCB Bancorp, Inc., Decatur, Illinois.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90-15582 Filed 7-3-90; 8:45 am]
BILLING CODE 6720-01-M

[AC-37; OTS No. 3308]

St. Louis County Federal Savings & Loan Associate Duluth, MN; Final Action Approval of Voluntary Supervisory Conversion Application

Date: June 27, 1990.

Notice is hereby given that the Director noted that on June 26, 1990, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of St. Louis County Federal Savings and Loan Association, Duluth, Minnesota, for permission to convert to the stock form organization pursuant to a voluntary supervisory conversion, and the acquisition of all the conversion stock by First Financial Investors Inc., First Financial Partners Fund I, L.P., First Financial Partners, L.P., and FFP Affiliates, L.P., New York, New York.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90-15583 Filed 7-3-90; 8:45 am]
BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities

The Office of Citizen Exchanges of the United States Information Agency (USIA) announces an Initiative Grant program to U.S. nonprofit organizations for projects that support the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before making inquiries to the Office.

General Information

The Office of Citizen Exchanges of the United States Information Agency announces a program to encourage through limited grants to nonprofit institutions, increased private sector commitment to and involvement in international exchanges.

The Office is a networking instrument that seeks to link the international exchange interests of U.S. private sector nonprofit institutions and organized groups with their counterparts abroad, preferably on a long-term basis.

Projects must feature an international people-to-people component, have a professional and cultural focus, and make a substantial contribution to long-term communication and understanding between the United States and the countries specified in this announcement.

The Office's programs focus on substantive issues of mutual interest, and the projects it supports should be intellectual and cultural, not technical in nature. Each private sector activity must maintain a non-political character and shall represent in a balanced way the diversity of American political, social, and cultural life. Programs under the authority of the Bureau of Educational and Cultural Affairs shall maintain scholarly integrity and meet the highest professional standards. The participation of respected universities and/or professional associations and other major cultural institutions is encouraged.

Request for Proposals for an Initiative Grant Project

The Relationship Between Government and Media in the U.S.

Summary:

The Office of Citizen Exchanges proposes the development of a program which will bring ten senior-level journalists and government media affairs officials from Anglophone Africa to the United States for 21 days to give them a greater understanding of American journalism and the interaction between the government and the media in this country.

A U.S. not-for-profit institution will design this program and select the American speakers. The participants will be nominated by USIS personnel overseas and selected by the United States Information Agency (USIA).

Basic Application Guidelines

The Office of Citizen Exchanges offers the following guidelines to prospective grant applicants:

Projects supported by the Office of Private Sector programs are intended to further USIA goals by assisting U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. The Office welcomes clearly defined projects and requires that USIS posts be involved in the nomination of foreign participants, with a view toward building ongoing institutional linkages between foreign and U.S. institutions.

Programs may take place anywhere in the United States or, in some instances, overseas in general accordance with the USIA program design.

Programs taking place in the United States should feature some geographic diversity in order to expose foreign participants to various regions.

Proposals should explicitly deal with translation and interpretation requirements, if any.

The Office does not support conferences or symposia except insofar as they are integral parts of a larger project that meets the USIA objectives defined in a request for proposals. In applications for funds to cover seminar costs as part of a larger project, proposals should include a detailed agenda, clearly identified speakers/presenters (and the professional/academic credentials thereof), and a careful explanation of the role of participants from other countries in the conference. The participation of a respected university or scholarly organization would in many cases be advantageous. Further, the themes addressed in such meetings must be of long-term importance rather than focussed on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution the conference or symposium will yield. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered, nor does the Office support film festivals.

In most cases, the Office will not provide funding merely to enable foreign participants to attend a conference on a few days' visit, and no funding is available simply to send U.S. citizens to conferences overseas.

On receipt of a letter of interest from institutions, this office will send out a concept paper and agrant application package that includes additional guidelines.

Institutions must submit sixteen copies of the final grant proposal.

Funding and Budget Requirements

The Office of Citizen Exchanges requires co-funding with grantees in all projects. Proposals with less than 30% cost-sharing must provide particularly strong justification even to receive consideration.

Most funding assistance is limited to participant travel and per diem requirements with modest contributions to defray administrative costs (salaries, benefits, other direct and indirect costs), which may not exceed 20% of the total funds requested. The grantee institution may wish to share any of these expenses.

Grant applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Following is an example of the required format:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.			
Total	$	$	$

USIA can provide approximately $60,000–$80,000 funding for the Media and Government project.

Application Deadlines

In order to receive grant application materials, prospective applicants should express their interest in writing no later than two weeks from the publication date of this announcement, to the Office of Citizen Exchanges at the address given below. On receipt of a letter of interest, E/PI will forward the project concept paper and all necessary application materials. Final proposals, complete with all necessary documentation and forms, will be due by close of business four weeks from the publication date of this announcement. Incomplete or late proposals will not be reviewed.

Proposals must be in acordance with Project Proposal Information Requirements (OMB #31180175).

For additional information and planning assistance relating to this grant award prospective applicants should contact: Hugh J. Ivory, Initiative Grants and Bilateral Accords Division, Office of Citizen Exchanges, United States Information Agency, 301 4th Street SW., Washington, DC 20547, Attention: Government and Media/Africa Project.

Dated: June 28th, 1990.

Stephen J. Schwartz,

Director, Office of Citizen Exchanges.

[FR Doc. 90–15507 Filed 7–3–90; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 11–90, Administrative Allowances by Board of Veterans Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(a) Does the Secretary have authority, through "administrative allowances," to reverse a prior unappealed decision of the agency of original jurisdiction (AOJ) on the basis of a "difference of opinion"?; (b) Does the Secretary have authority, through "administrative allowances," to reverse a prior decision of the Board of Veterans Appeals (BVA) on the basis of a "difference of opinion"?; and (c) If the Secretary has the legal authority to administratively allow cases involving AOJ or BVA finality, does the practice contemplated by the provisions of 38 CFR 19.5(b) and 19.184, by which the Chairman and Vice Chairman of the BVA grant these allowances, represent a valid exercise of the Secretary's statutory authority to promulgate rules and regulations and to assign duties and delegate authority to officers and employees?

EFFECTIVE DATE: May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws

administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veteran's benefit claimants and their representations in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contracting the Va official named above.

A summary of the General Counsel's opinion designated O.G.C Prec. 11–90, Administrative Allowances by Board of Veterans Appeals, requested by Chairman, Board of Veterans Appeals (01), is as follows:

Held:

Under 38 U.S.C. 4005(c) and (d)(3) and the broad authority of the Secretary to promulgate rules and regulations necessary or appropriate to carry out the laws administered by the Department of Veterans Affairs, there is legal authority to establish a procedure whereby cases involving a prior unappealed determination of an agency of original jurisdiction (AOJ) may, while on appeal to the Board of Veterans Appeals (BVA), to allowed based on a "difference of opinion." However, the current provision for "administrative allowances" contained in 38 CFR 19.5(b) and 19.184 places the authority to make that determination with the Chairman or Vice Chairman of the BVA. Despite some changes in the wording of these provisions as a result of Public Law No. 100–687, 102 Stat. 4106 (1988), chapter 71 clearly specifies that it is the sections of the BVA which are charged by Congress with reaching "decisions" and "determinations" on all appeals to the Secretary. Therefore, administrative allowances by the Chairman or Vice Chairman are inconsistent with the current legislative scheme. For cases involving BVA finality, Congress has established, in 38 U.S.C. 3008 and 4003, that BVA decisions are final unless reopened by new and material evidence, reconsidered, or corrected based on an "obvious error." The "difference of opinion" standard employed in granting administrative allowances in cases previously denied by the BVA —is inconsistent with these provisions. Therefore, under current law the Secretary does not have legal authority to promulgate regulations establishing such a practice with regard to cases involving BVA finality. For the reasons given, 38 CFR 19.5(b) and 19.184 do not represent a valid exercise of the Secretary's authority to promulgate regulations or to delegate authority to exercise heads under the provisions of 38 U.S.C. 2210 and 212.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–15465 Filed 7–3–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 2-90, Administrative Error Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by Va officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—whether "administrative error" under 38 U.S.C. 3012(b)(10), as implemented by 38 CFR 3.500(b)(2), which provides for determining the effective date of reduction or discontinuance of benefits by reason of an erroneous award based solely on administrative error, is limited in scope to improper interpretation by the Department of Veterans Affairs (VA) of law, regulations, or existing agency instructions; thus, excluding errors of fact.

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue Written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 2–90, Administrative Error Decisions—38 CFR 3.500(b)(2); 38 U.S.C. 3012(b)(9) and (10) (was O.G.C. Advisory Opinion 37–89 dated July 19, 1989), requested by Chief Benefits Director (20), is as follows:

Held

A reduction or discontinuance of benefits based on an erroneous award will be made in accordance with 38 U.S.C. 3012(b)(10) when it is determined that:

1. The beneficiary was not guility of an act of commission or omission which, in whole or in part, caused the erroneous award of benefits and had no knowledge thereof; and

2. VA either:

a. committed an administrative error, including an error of fact (*e.g.*, VA mistakes or overlooks the facts of record or makes a purely clerical error), or

b. committed an error of judgment (*e.g.*, VA fails to properly interpret, understand and follow existing Department instructions or regulatory or statutory requirements).

Dated: June 12, 1990.

Raoul L. Carrol,

General Counsel.

[FR Doc. 90–15462 Filed 7–3–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 1-90, Request for Opinion Regarding Presumptive Service Connection

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit

claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—whether service connection may be established pursuant to 38 CFR 3.309(a) when a hereditary or familial disease first becomes manifest to a compensable degree within the presumptive period following discharge from service?

EFFECTIVE DATE: March 16, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officals and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veteran's benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 1–90. Request for Opinion Regarding Presumptive Service Connection, requested by Acting Chief Benefits Director (211C), is as follows:

Held

Service connection may be established pursuant to 38 CFR 3.309(a) when a hereditary or familial disease first becomes manifest to a compensable degree within the presumptive period following discharge from service provided the rebuttable presumption provisions of § 3.307 are satisfied.

Dated: June 12, 1990.

Raoul L. Carrol,

General Counsel.

[FR Doc. 90–15463 Filed 7–3–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 129
Thursday, July 5, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 9, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and Salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 29, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-15641 Filed 6-29-90; 4:55 pm]
BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, July 10, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW, Washington, DC 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31269, *Massachusetts Bay Transportation Authority—Exemption—Discontinuance of Service in Arlington, Bedford, and Lexington, Massachusetts*

Finance Docket No. 31643, *United Transportation Union v. Southern Pacific Transportation Co., et al.*[1]

Docket No. 40298, *The Society of the Plastics, Industry, Inc. v. Consolidated Rail Corporation, et al.*

No. MC-C-30174, *Petition for Declaratory Order—American Movers Conference Consumer Marketing and Research Program—Section 11910 (a) (2)*

1992 Budget

CONTACT PERSON FOR MORE INFORMATION: A Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,
Secretary.

[FR Doc. 90-15713 Filed 7-2-90; 1:34 pm]
BILLING CODE 7035-01-M

[1] This proceeding was formerly designated as No. 40315.

Corrections

Federal Register
Vol. 55, No. 129
Thursday, July 5, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 774, 779, 786, 787, and 799

[Docket No. 900672-0172]

Establishment of General License GDR; Exports to the German Democratic Republic

Correction

In rule document 90-15083 beginning on page 26652 in the issue of Friday, June 29, 1990, make the following corrections:

1. On page 26652, in the third column, in the 13th line "Coordinated" should read "Coordinating".

2. On page 26655, in the first column, under amendatory instruction 8.C., in the fourth line, "1358A" should read "1385A".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-00-4212-18]

Realty Action; Sale of Public Lands in Clark County, NV

Correction

In notice document 90-13217 beginning on page 23305 in the issue of Thursday, June 7, 1990, make the following corrections:

1. On page 23305, in the first column of the table, after the fifth entry, the center heading should read "T. 20 S., R. 60 E., section 9".

2. On the same page, in the third column, make the following changes to the table:

a. From the legal description for parcel number, 81-49, remove the final "SW¼".

b. In the legal description for parcel number 90-05, "E¼" should read "E½".

c. After the 10th entry, the center heading should read, "T. 20 S., R. 60 E., section 28".

d. The legal description for parcel number 90-10 should read, "E½SE¼ SE¼NW¼".

e. After the 21st entry, the center heading should read, "T. 20 S., R. 60 E., section 33".

f. After the 29th entry, the center heading should read, "T. 21 S., R. 60 E., section 3".

g. After the 30th entry, the center heading should read, "T. 21 S., R. 60 E., section 4".

h. After the 32nd entry, the center heading should read, "T. 21 S., R. 60 E., section 24".

i. After the 33rd entry, the center heading should read, "T. 21 S., R. 60 E., section 25".

3. On page 23306, in the first column, in the third line "day" should read "date".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 430

Performance Management and Recognition System

Correction

In rule document 90-14747 beginning on page 25947 in the issue of Tuesday, June 26, 1990, make the following correction:

§ 430.204 [Corrected]

On page 25949, in the third column, in § 430.204(j)(3), the last line should read "5 U.S.C. 4302(b)(6) and 4303(a)."

BILLING CODE 1505-01-D

federal register

Thursday
July 5, 1990

Part II

Federal Reserve System

12 CFR Parts 208 and 225

Appraisal Standards for Federally Related Transactions; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H, Regulation Y; Docket No. R-0685]

Appraisal Standards for Federally Related Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") [1] requires the Board to adopt regulations regarding the performance and utilization of appraisals by state member banks, bank holding companies, and nonbank subsidiaries of bank holding companies. Title XI and these implementing regulations are intended to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. This regulation, and similar regulations adopted by the other financial institutions regulatory agencies [2] and the Resolution Trust Corporation ("RTC"), provide affected parties with added assurance that real estate appraisals used in connection with federally related transactions are performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Toward this end, the regulation identifies which transactions require an appraiser, sets forth minimum standards for performing appraisals, and distinguishes those appraisals requiring the services of a State certified appraiser from those requiring a State licensed appraiser.

DATES: *Effective Date:* August 9, 1990.

Complaince Dates: Appraisals performed in connection with federally related transactions are to comply with the standards set forth in this regulation by August 9, 1990. State certified or licensed appraisers, as appropriate, must be used for federally related transactions by July 1, 1991, unless this deadline is extended by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council for a given state pursuant to provisions of title XI. Appraisals for real estate-related financial transactions entered into before August 9, 1990, do not have to comply with the standards of this regulation; moreover, sales of loans that were originated before August 9, 1990, will not require an appraisal to be performed in accordance with this regulation. A transaction will be deemed entered into and a loan will be deemed originated if there is a binding commitment to perform before the effective date of this regulation.

FOR FURTHER INFORMATION CONTACT: Roger T. Cole, Assistant Director (202/452-2618), Stanley B. Rediger, Senior Financial Analyst (202/452-2629), or Virginia M. Gibbs, Senior Financial Analyst (202/452-2521), Division of Banking Supervision and Regulation; or Michael J. O'Rourke, Senior Attorney (202/452-3288) or Mark J. Tenhundfeld, Attorney (202/452-3612), Legal Division. For the hearing impaired *only*. Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

A. Background

Title XI of FIRREA requires the Board to establish standards for performing appraisals in connection with federally related transactions within the Board's jurisdiction. In addition, title XI requires the Board to identify those circumstances that require a State certified appraiser and those that require a State certified or licensed appraiser. In response to this legislative mandate, the Board has adopted this regulation which is designed to address problems perceived by Congress and the Board.

Section 1121 of FIRREA defines a "federally related transaction" as a real estate-related financial transaction which, *inter alia*, requires the services of an appraiser. The Board has required State certified or licensed appraisers to be used for all real estate-related financial transactions except those transactions in which (i) a lien is placed on real property solely through an abundance of caution, (ii) the transaction value (as defined in the proposed regulation) is less than or equal to $100,000, (iii) the transaction involves a lease that is not the economic equivalent of a purchase or sale; (iv) there is a transaction resulting from a maturing extension of credit under certain circumstances; and (v) there is an acquisition of interests in loans that complied with this regulation. The Board, acting pursuant to section 1112 of FIRREA, has identified which categories of federally related transactions will require a State certified appraiser and which will require a State licensed appraiser.

In addition, the Board has adopted standards, pursuant to section 1110 of FIRREA, for the performance of appraisals in connection with federally related transactions within the Board's jurisdiction. As mandated by title XI, these standards require that all such appraisals be written and that they conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Standards Board of the Appraisal Foundation.[3] Further, the Board has adopted additional standards set forth in this regulation.

This regulation is intended to supplement the Board's appraisal guidelines [4] currently in effect. These guidelines continue to remain in effect, subject to amendment.

The Board has adopted this regulation to improve the safety and soundness of all financial institutions covered by title XI within the Board's jurisdiction. The soundness of real estate loans and investments made by financial institutions covered by title XI depends upon the adequacy of the underwriting or analysis used to support these transactions. A real estate appraisal is one of several essential components of the lending process. Accordingly, this regulation, coupled with existing guidance on real estate appraisals, is intended to provide the affected entities with a reasonable degree of assurance that real estate appraisals used in connection with federally related transactions will be reliable.

The appraisal standards set forth herein are required to be effective not later than August 9, 1990. As indicated above, title XI mandates that these standards require compliance with, at a minimum, the USPAP. The Board is awaiting final revisions to relevant provisions of the USPAP, which are currently being prepared by the Appraisal Standards Board. Upon receipt of these changes, the Board intends to solicit comment on the revised USPAP in order to collect the broadest possible comment regarding appraisal standards for federally related transactions, including those standards incorporated by reference. Upon receipt of those comments, the Board thereafter

---

[1] Pub. L. No. 101-73, 103 Stat. 183 (1989); 12 U.S.C. 3310, 3331-3351.

[2] The Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA").

[3] The Appraisal Foundation was established by several professional appraisal organizations as a not-for-profit corporation under the laws of Illinois in order to enhance the quality of professional appraisals.

[4] *See Guidelines for Real Estate Appraisal Policies and Review Procedures*, S.R. 87-42 (FIS), adopted by the various divisions of bank supervision at the FDIC, the OCC, and the Board.

may propose amendments to this regulation, should it be deemed appropriate.

B. Comments

On February 6, 1990 (55 FR 4810 (February 9, 1990)), the Board issued for comment proposed rules to implement title XI of FIRREA. The Board received 206 comments from interested individuals and organizations. The principal issues raised by the comments are discussed below. In addition, the ensuing section-by-section analysis addresses many of the specific concerns raised by the comments.

Section 225.61 Authority, Purpose, and Scope

A few commenters suggested that title XI of FIRREA does not specifically authorize the Board to prohibit a regulated institution from selecting an appraiser solely on the basis of membership or lack of membership in an appraisal organization. The Board believes that this provision is consistent with both the letter and the spirit of title XI. Moreover, the Board believes that the safety and soundness of regulated institutions is advanced by this provision. To emphasize this point and to provide an additional authority for this requirement, the Board has amended this section to include a citation to the provisions granting the Board general supervisory authority over State member banks, bank holding companies, and nonbank subsidiaries of bank holding companies.

Section 225.62 Definitions

The Board received a significant number of comments on the following definitions.

"Complex 1-to-4 residential property appraisal." Thirty-four comments raised concerns about this definition. Of these, nine suggested that an appraiser would be required in order to determine whether a given appraisal is complex. Many were concerned that the list of factors suggested in the definition would result in virtually all appraisals being deemed complex. Several others were concerned that the list was too subjective, and that a regulated institution might be found to have violated the rule because an examiner disagreed with the institution's determination. Three people suggested that the Board should eliminate the concept and focus solely on the value of the property, while others suggested the elimination or deletion of various proposed factors.

In response to these comments, the Board has amended this definition. Under the final rule, an appraisal will be deemed to be complex if the property to be appraised, the form of ownership, or market conditions are atypical. The list of factors that might make an appraisal complex has been moved to the preamble to emphasize that this list is only illustrative. Moreover, the Board has adopted a presumption that appraisals of 1-to-4 family residential property will be non-complex if the transaction value is less than $1,000,000. However, as discussed more fully below, the regulated institution maintains the ultimate responsibility for determining whether a given appraisal is complex. Finally, appraisals of any type of property rendered in connection with a transaction having a transaction value less than $250,000 may be performed by a competent licensed appraiser.

"Federally related transaction." Several comments requested that various transactions not be subject to this regulation, because by their nature the transactions would not require the services of an appraiser. As noted below, the Board has expanded the circumstances when a certified or licensed appraiser will not be required, thereby excluding the affected transactions from the definition of "federally related transaction." However, the Board has not amended this definition, which was derived from title XI, in order to remain fully consistent with the intent of the statute.

"Market value." Five people commented on this definition. Several suggested changes to the definition to allow for a going concern value or consideration of favorable financing or special value to a specific user. The remaining comments recommended that market value should be calculated as of the date of consummation, and that the footnote in the preamble should be inserted into the text of the regulation.

The Board believes that this definition, which is widely accepted by mortgage lenders and many government agencies, requires no amendment. The proposed amendments relating to going concern value or consideration of other factors may contribute to a misleading or inaccurate appraisal.

"Real estate-related financial transaction." Several comments suggested that certain transactions not be considered "real estate-related financial transactions," including a refinancing by the same institution, an extension of balloon payments not related to the borrower's inability to repay, and the taking of real estate collateral to protect a bank against losses stemming from credit extended to unrelated third parties. Four comments recommended that "other real estate owned" property be exempt.

The Board agrees that certain transactions do not require the services of an appraiser, as discussed below. However, the Board believes that this definition, which was taken from title XI, is consistent with the intent of the statute. Accordingly, the Board has not amended this definition.

"State certified appraiser." One commenter pointed out that certification criteria will be adopted by the Appraisal Qualifications Board of the Appraisal Foundation. The Board has amended this definition accordingly.

"Transaction value." A comment requested clarification on the transaction value of an interest in pooled loans or mortgage-backed securities. The Board has amended the regulation to provide that this definition applies to each loan in a pool, but not to the pool itself. In addition, the Board has clarified that a purchase of a loan or interest in a loan will not require an appraisal of the property that serves as collateral, provided that the property was appraised in conformance with this regulation. As a consequence, a regulated institution purchasing an interest in a pool will not require each property securing a loan to be reappraised. However, if a regulated institution intends to purchase a pool of loans that do not have conforming appraisals, then appraisals will have to be performed on the nonconforming underlying real estate collateral prior to the purchase. In such instances, the transaction values will be the individual amounts of the loans, not the aggregate amount of the pool.

Section 225.63 Appraisals Not Required; Transactions Requiring a State Certified or Licensed Appraiser

(a) *Appraisals not required.*

De minimis test. The comment received most often was a request that the Board raise the *de minimis* figure below which an appraisal performed by a certified or licensed appraiser would not be required. Sixty-five comments requested that the Board raise this figure, with suggested cutoffs ranging from $25,000 to $250,000. The figure most often suggested was $100,000. Twenty-three commenters stated that, in their experience, very few losses could be attributed to improper or fraudulent appraisals of real estate rendered in connection with transactions having a transaction value below the range of *de minimis* amounts proposed.

An argument consistently raised by these commenters was that the increased protection afforded by appraisals would not outweigh the burdens on the regulated institutions

and their customers for comparatively small transactions. Several noted that the proposed rule would have a disproportionate impact on small businesses and people with low and moderate incomes.

In response to these comments, and after consultation with the other financial institutions regulatory agencies and the RTC, the Board has raised the *de minimis* amount to $100,000. However, the Board has required that transactions falling below this amount (and other transactions not requiring a State certified or licensed appraiser) must comply with the existing inter-agency guidelines regarding appraisals. The Board believes that the $100,000 *de minimis* figure is appropriate both in light of the absence of evidence that transactions below $100,000 have posed systemic risks as well as the protections afforded to individual regulated institutions by the inter-agency appraisal guidelines.

Another forty comments proposed alternatives to the *de minimis* test, including exempting transactions if the ratio of the loan amount to the value of collateral was sufficiently small, setting higher *de minimis* cutoffs based on the strength of the institution in question, and exempting either small towns or certain types of transactions altogether. The Board considered the advantages of the alternatives proposed, but has concluded that each presents significant problems. For instance, an appraisal would be necessary in many cases before one could accurately determine the loan-to-value ratio. In addition, an exemption of small towns or certain types of institutions appears to go beyond the intent of title XI. The Board believes that the increased *de minimis* amount addresses many of the concerns underlying such suggestions.

Abundance of caution. A few comments requested clarification of this term. The Board has not amended the regulation, but has clarified in the preamble that this exception is to be applied only in those circumstances where the terms of a transaction have not been made more favorable than they would have been in the absence of a lien on real property.

Leases. Several comments suggested that an appraisal should not be required for many leases. The Board agrees that significant losses arising from leases are likely to occur primarily with leases that are the economic equivalent of the purchase of real estate. Accordingly, the Board has added leases that are not equivalent to a purchase as a category of transactions not requiring the services of a State certified or licensed appraiser.

Renewals, refinancings, etc. A few comments requested the Board to exempt renewals of performing loans from the requirements of the regulation. The Board believes that many such transactions do not require reappraisals, and thus has amended the regulation to exempt transactions resulting from maturing extensions of credit under certain circumstances. This amendment is likely to lessen the burden of complying with this regulation without adding any significant degree of risk.

Purchases of interests in real estate loans. As noted above, the Board received requests for clarification on how the regulation applies to the purchase of interests in real estate loans, such as the purchase of a pool of loans. The Board believes that such purchases should not require additional appraisals on the underlying real estate collateral. Thus, the Board has exempted such transactions from the regulation, provided that the loans being purchased were supported by appraisals conforming to this regulation.

(b) *Transactions requiring State certified appraisers.* Forty-one comments were received related to this subsection. Many of these comments suggested that certified appraisers would be in short supply, particularly in rural areas, and that regulated institutions would have to hire someone from another town or city who might not be familiar with the local market. Others stated that the Board should allow licensed appraisers to appraise some commercial property. A few comments maintained that the proposed Tier 1 test would place smaller institutions at a competitive disadvantage. Others noted that title XI requires a certified appraiser only when the size, complexity, and type of transaction so warrants, and requested greater flexibility in using licensed appraisers for complex appraisals rendered in connection with small transactions.

In response to these comments, the Board has amended the provision governing when State certified appraisers are required. Under the revised rule, a certified appraiser will be required in three instances: First, for all transactions having a transaction value of $1,000,000 or more; second, for transactions involving an interest in real estate other than a 1-to-4 family residence, if the transaction value is $250,000 or more; and third, for transactions involving an interest in 1-to-4 family residential real estate if the transaction value is $250,000 or more and the appraisal is complex.

As noted above, the Board also has established a presumption that appraisals of 1-to-4 family residential properties are non-complex. Procedures are provided for completing an appraisal inappropriately begun by a licensed appraiser.

(c) *Transactions requiring either a State certified or licensed appraiser.* Consistent with the changes outlined above, licensed or certified appraisers will be permitted to perform all appraisals rendered in connection with a transaction having a transaction value less than $250,000, and for all non-complex appraisals of 1-to-4 family residential properties if the transaction value is below $1,000,000.

Section 225.64 Appraisal Standards.

(a) *Minimum standards.* (1) *Compliance with USPAP; departure provision.* Several comments expressed concern that the Appraisal Foundation is not representative of the entire appraisal industry, and thus the Board should not adopt the Appraisal Foundation's standards. Two others questioned whether the public has had an adequate opportunity to comment on the standards set forth in the USPAP. Six comments requested that the Board allow the use of the Departure Provision in the USPAP for federally related transactions.

The Board's rule requires compliance with the USPAP and additional standards established by the Board. This is consistent with the requirement of title XI that institutions regulated by the Board must have appraisals that conform, at a minimum, to the USPAP for all federally related transactions. Thus, the Board has not deleted the reference to the Appraisal Foundation, although the Board has clarified that the standards have been adopted by the Appraisal Standards Board of the Appraisal Foundation.

As noted above, the Appraisal Standards Board of the Appraisal Foundation currently is revising the USPAP. Upon completion of the revisions to the USPAP standards that are relevant to federally related transactions, the Board will solicit public comment on those revised standards, and may amend this regulation in response to comments received.

For the reasons stated in the section-by-section analysis of the appraisal standards, the Board remains of the opinion that the Departure Provision in the USPAP is inconsistent with the intent of title XI, and therefore has not amended this part of the standard.

(5) *Prior sales history.* One comment recommended that disclosure of prior sales of a given property be required

only if this information is reasonably available. The Board believes that this information is vital to an accurate understanding of the appraisal, and has not amended this standard.

(6) *Revenues, expenses, and vacancies.* The Board received a comment requesting that an appraiser be allowed to use projected future rents and vacancies in determining market value. The Board believes that such projections may result in an inaccurate or misleading appraisal, and therefore has not amended the regulation. Another comment suggested that the Board also require an analysis of current expenses as well as revenues and vacancies. The regulation has been changed to incorporate this suggestion. Finally, the term "rents" has been changed to "revenues" to clarify that income may be generated from sources other than rents.

(9) *Deductions and discounts.* Five commenters expressed their concern that requiring an "as is" value of the appraised property would severely restrict the ability of a regulated institution to make construction loans. The Board has clarified in the preamble discussion of this standard that an "as is" value is only one component of an appraisal, and that it is necessary to enable the regulated institution to adequately protect its interests under differing scenarios.

(12) *Legal description.* Two comments sought clarification on how to define "legal description." The Board has amended the preamble to this standard to clarify that the description contained in a deed is sufficient.

(13) *Personal property, fixtures, and intangible items.* The Board received one comment requesting that an appraiser not be required to value personal property that is located on the real estate. The Board remains of the view that certain items of personal property may affect the market value of real estate, and therefore has not amended this standard.

(14) *Use of recognized appraisal approaches.* A few comments stated that it is unnecessary to use all three recognized approaches for every appraisal. The Board agrees with these comments, and has amended the preamble language to clarify that a given approach may be inapplicable for a particular appraisal. However, the standard still requires an appraiser to explain why an approach was not used.

Section 225.65 Appraiser Independence

Twenty-one comments raised questions concerning this provision. Four stated that complete separation of in-house appraisers from loan officers is impossible in small banks. Another four comments suggested that a bank should be allowed to decide when to use in-house appraisers, while several others proposed that in-house appraisers should be allowed for transactions with values up to suggested limits. Two others requested that banks be allowed to provide a customer with a list of preapproved appraisers and let the borrower select the appraiser. Several requested that the borrower be allowed to hire the appraiser. Other comments requested that an appraisal performed for one regulated institution be able to be used by another institution.

Several comments requested that the Board require greater separation than the proposed rule required. Two suggested that a bank not be allowed to pay bonuses based on loan production. One recommended that individuals who are vested with the authority to hire, discipline, or promote staff appraisers should not be appointed by individuals who are involved in the lending, investment, or collection function.

The Board agrees that a borrower who has contacted several banks about obtaining a loan should not have to pay for different appraisals prepared at the request of the lending institutions. For this reason, the Board has amended the provision regarding fee appraisers to permit an appraisal to be used by more than one regulated institution under certain circumstances. However, the Board has not made any additional amendments to this provision. The Board recognizes that different regulated institutions may comply with this standard in differing ways. For instance, one institution may engage fee appraisers to perform all appraisals, while another may establish a separate in-house department. The Board also recognizes that in certain instances creating an in-house appraisal department is not feasible, and in such instances the Board allows the separation of the appraisal and lending functions in a manner best suited to a particular institution. The Board believes that this section provides regulated institutions with enough flexibility to design solutions that will comply with the regulation while not having to implement any one structure. Accordingly, the Board has not otherwise amended this provision.

Section 225.66 Membership in Appraisal Organizations

As noted above, the Board received a number of comments questioning whether title XI empowered the financial institution regulatory agencies to preclude hiring based solely on membership or lack of membership in a particular appraisal organization. The Board believes that this subsection of the regulation properly implements the protections provided by section 1122(c) of FIRREA. Moreover, the Board believes that the safety and soundness of regulated institutions is best protected by requiring an institution to look beyond the designation of an individual to his or her education and experience when determining competency. Accordingly, this provision has not been amended.

C. Section-by-Section Analysis.

Section 225.61 Authority, Purpose, and Scope

This section identifies title XI of FIRREA as the authority under which this regulation is promulgated. Further, it identifies those institutions, including the Board and institutions regulated by the Board ("regulated institutions"), which must comply with the regulation. State member banks, bank holding companies, and nonbank subsidiaries of bank holding companies are specifically covered.

Section 225.62 Definitions

Except where noted below, the definitions set forth in Title XI shall apply to the terms used in this regulation.

—"Appraisal." This definition currently is used by nineteen federal agencies.[5] The Board believes that this widespread use and acceptance will produce consistent appraisals.

—"Complex 1-to-4 family residential property appraisal." Section 1113 of FIRREA allows the use of a State licensed appraiser for, among other federally related transactions, 1-to-4 family residential property appraisals, "unless the size and complexity requires a State certified appraiser." The Board deems a "complex 1-to-4 family residential property appraisal" to be one in which the property to be appraised, form of ownership, or market conditions are atypical. Examples of atypical factors may include age of improvements, architectural style, size of improvements, size of lot, neighborhood land use, potential environmental hazard liability, leasehold interests, or other unusual factors. This list is illustrative only.

—"Market value." This definition is commonly used in connection with

[5] *See* 49 CFR part 24, "Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs." 54 Federal Register 8,913 (1989).

mortgage lending by a number of government agencies and others. The definition contemplates the consummation of a sale as of a specified date and the passing of title from seller to buyer under open and competitive market conditions requisite to a fair sale. It is designed to provide an accurate and reliable measure of the economic potential of property involved in federally related transactions. Moreover, the Board believes that widespread acceptance and use of this definition will provide consistency to appraisals.

In applying this definition of market value, adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs that are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party financial institution that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar-for-dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.[6]

—"Real estate-related financial transaction." This definition is the same as that set forth in section 1121(5) of FIRREA, except that "and" is replaced with "or" throughout so as to comply with the intent of Congress.

—"State certified appraiser." This classification applies to appraisers who are recognized by the States as being more knowledgeable of and experienced in appraisals than are licensed appraisers. Section 1116 of FIRREA contemplates that each state or territory will adopt standards and procedures, consistent with the purposes of title XI, for obtaining the designation of "State certified appraiser." To be consistent with title XI, each state's standards and procedures must require its certified appraisers to meet, at a minimum, the criteria for certification issued by the Appraisal Qualifications Board of the Appraisal Foundation. Moreover, no state or territory may certify an appraiser under title XI unless that individual passes an examination, administered by the state or territory, that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraisal Foundation. The final regulation does not prevent a state from establishing additional certification criteria.

Under FIRREA, the Board is authorized to establish certification criteria in addition to those adopted by a given state. Additionally, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council may issue a written finding that the certification criteria of a state or territory are inadequate for specified reasons. Thus, an individual may be a "State certified appraiser" only if (a) the individual complies with all state-imposed criteria and additional criteria, if any, imposed by the Board, and (b) the appraiser certifications and licenses of a state have not been rejected by the Appraisal Subcommittee.

—"State licensed appraiser." Each state may elect to adopt licensing criteria that are less rigorous than certification criteria. However, licensing criteria must be adequate to protect federal financial and public policy interests. For example, simply "grandfathering" all existing appraisers generally would not be acceptable. Rather, the states and territories are to design criteria that will ensure that licensed appraisers will have the experience and training sufficient to perform appraisals that comply with this regulation.

As with State certified appraiser criteria, the Board is authorized to impose additional licensing requirements. Moreover, as noted above the Appraisal Subcommittee is charged with monitoring state appraiser certifying and licensing agencies, and may reject state certifications and licenses if a state's appraisal policies, practices, or procedures are found to be inconsistent with title XI.

—"Tract development." A tract development may be units in a subdivision, condominium project, timeshare project, or any similar project meant to be sold as individual units over a period of time. A project will be deemed to be a tract development if it is currently, or is intended to be, offered for sale as a single development.

"Transaction value." This definition is used to determine in part which transactions require a State certified appraiser and which require a State licensed appraiser. The Board will consider a series of related transactions as one transaction if it appears that a regulated institution is attempting to evade the requirements of title XI of FIRREA or this regulation.

Section 225.63 Transactions Requiring State Certified or Licensed Appraiser

(a) *Appraisal not required.* Section 1121(4) of FIRREA defines a federally related transaction as a real estate-related financial transaction that, among other things, requires the services of an appraiser. The Board recognizes that not all real estate-related financial transactions will require an appraiser. For instance, an appraisal would not be needed where a lien on real property has been taken as collateral solely through an abundance of caution. Collateral will be deemed to be taken in an abundance of caution where the loan terms as a consequence have not been made more favorable than they would have been in the absence of the lien. Accordingly, this exception is intended to have very limited application. In addition, the Board does not require a State certified or licensed appraiser for real estate-related financial transactions having a transaction value less than or equal to $100,000.

A third instance where a State certified or licensed appraiser is not required is a lease that is not the economic equivalent of a purchase or sale of real estate. An example of such a lease is a sublease by a bank of a portion of its premises to an unrelated third party. On the other hand, an assignment of a lease as collateral for the extension of credit would be an example of the economic equivalent of a purchase or sale.

Fourth, the Board will not require a State certified or licensed appraiser for transactions resulting from a maturing extension of credit, provided that the borrower has made all scheduled payments under the note, no new funds are advanced, the borrower remains creditworthy, and the market conditions and collateral have not significantly deteriorated.

Finally, a State certified or licensed appraiser will not be required if a regulated institution purchases an interest in property or in a loan secured by real property if the property has been appraised in accordance with this regulation. If the property was not adequately appraised, then the

[6] This paragraph regarding comparables is taken from the standard definition of "market value" used by the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), and OTS, among others. By including this paragraph in the preamble rather than the regulation, the Board does not intend to suggest any change in the interpretation or application of the definition of "market value" as this term currently is used.

regulated institution must order an appraisal for that property.

Any real estate-related financial transaction that does not require a State certified or licensed appraiser still will have to comply with the Board's Guidelines for Real Estate Appraisal Policies and Review Procedures (the "Guidelines"), if applicable. The Board expects that such transactions will be supported by evaluations of real estate collateral in a manner that is consistent with safe and sound banking practices. Determinations regarding when a regulated institution shall require a reappraisal, updated appraisal, or new appraisal of property are governed by the Guidelines. These Guidelines identify concerns relevant to making such a determination.

(b) *Transactions requiring State certified appraiser.* Title XI requires a State certified appraiser to be used if the size of the transaction and the complexity of the appraisal warrants the expertise of the State certified appraiser. The Board's regulation requires a State certified appraiser to be used in three instances. First, all appraisals rendered in connection with federally related transactions having a transaction value of $1,000,000 or more require a State certified appraiser, regardless of complexity. Second, all federally related transactions having a transaction value equal to or greater than $250,000, except those involving appraisals of 1-to-4 family residential properties, require a State certified appraiser. Third, 1-to-4 family residential property appraisals require a State certified appraiser if the transaction value is $250,000 or more and the appraisal will be complex.

Before hiring an appraiser, the institution should assess the property to determine the qualifications that an appraiser will need to complete the appraisal assignment and whether the transaction, due to its complexity, would require a certified appraiser. A regulated institution may presume that appraisals of 1-to-4 family residential property are not complex, unless the institution has readily available information that a given appraisal will be complex. Such information may be provided, for instance, on a loan application. If a licensed appraiser discovers during the assignment that the appraisal is complex or beyond the appraiser's expertise, then he or she is required to disclose this situation to the institution and take the necessary action to remedy the deficiency. A certified appraiser could then be employed or the licensed appraiser could complete the appraisal and have a certified appraiser review and co-sign the appraisal report.

(c) *Transactions requiring either a State certified or licensed appraiser.* Any federally related transaction that does not require the services of a State certified appraiser must be performed by, at a minimum, a State licensed appraiser. State licensed appraisers may perform appraisals rendered in connection with any federally related transaction having a transaction value up to, but not including, $250,000. In addition, State licensed appraisers may perform appraisals of 1-to-4 family residential property for transactions with a value up to, but not including, $1,000,000 if the appraisal will not be complex.

Section 225.64 Appraisal Standards

(a) *Minimum standards.* Section 1110 of FIRREA instructs the Board to prescribe appropriate standards for the performance of appraisals made in connection with federally related transactions within its jurisdiction. Further, section 1110 mandates that the standards require, at a minimum, that appraisals be written and that they conform to the generally accepted appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. The Board is empowered to require compliance with additional appraisal standards if it makes a written determination that such additional standards are required in order to properly carry out its statutory responsibilities. This section includes the minimum standards set forth in the statute, while listing additional standards that shall apply to all appraisals performed in connection with federally related transactions.

In enacting title XI of FIRREA, Congress was responding to perceived problems in the appraisal industry. These problems were identified by the House Committee on Government Operations during a series of hearings,[7] and have been cited repeatedly in the legislative history of title XI.[8] The Board has adopted the following standards to further the intent of title XI in addressing these problems. These standards are designed to contribute to safe and sound banking practices by requiring reliable appraisals.

(1) *Compliance with USPAP; departure provision.* This standard requires compliance with the USPAP, and clarifies that the Departure Provision [9] in the USPAP is inapplicable to appraisals conducted in connection with federally related transactions within the Board's jurisdiction. The Board believes that the Departure Provision allows appraisal services to be performed which produce something different from an "appraisal" as contemplated by title XI of FIRREA. For instance, in accordance with the Departure Provision and consistent with current USPAP requirements, a letter opinion might be produced that could be silent about trends of rents, vacancies, or overbuilding. Explanatory comments in the USPAP regarding the Departure Provision in the USPAP cite examples of when the departure provision might apply;[10] however, for purposes of the proposed regulation, such services are not appraisals as this term is used in title XI. The Board believes that the Departure Provision in the USPAP could allow for the omission of data that should be included in developing and reporting appraisals rendered in connection with federally related transactions and, therefore, has determined that the Departure Provision shall not apply to such appraisals.

The Board (or other appropriate body) will solicit comment on any revisions to the USPAP that are relevant to federally related transactions. Changes to the USPAP made after the date this regulation is published shall not be applicable to federally related transactions until there has been notice of the changes and the opportunity for interested persons to comment.

(2) *Disclosure of competency.* An appraiser is required to have the appropriate knowledge and experience that will be required to complete an assignment competently. If such knowledge and experience is initially lacking, the appraiser must disclose in the appraisal both this fact and the steps taken to comply with the Competency Provision in the USPAP.

(3) *Market value.* This standard requires an appraisal to document an appraiser's opinion of a property's "market value" as this term is defined. The definition of "market value" was developed by FNMA and FHLMC with the input of many professional appraisal

---

[7] House Comm. on Government Operations, *Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market*, H.R. 99-891, 99th Cong., 2d Sess. (1986).

[8] *See, e.g.*, 135 Cong. Rec. S4004 (daily ed. April 17, 1989) (statement of Sen. Dodd); H.R. Rep. No. 100-1001, 100th Cong. 2d Sess. pt. 1, at 19, 21-26; 133 Cong. Rec. H10709 (daily ed. Nov. 20, 1987) (statement of Conq. Barnard); 132 Cong. Rec. H3452 (daily ed. June 6, 1986) (statement of Cong. Barnard).

[9] The Departure Provision enables appraisers to "perform an assignment that calls for something less than or different from the work that would otherwise be required by the [USPAP]."

[10] These examples include introducing into evidence during a judicial proceeding a one page summary that incorporates by reference an appraiser's file or preparing a brief update of a previously prepared appraisal.

organizations. Without such a standard, a lender might select a definition of value that allows the value of real property to be increased by favorable financing, going concern value, or special value to a specific user. This standard proposes to provide to interested parties the information necessary to determine the value of a property.

(4) *Written appraisals; forms.* This standard sets forth the legislative mandate that all appraisals be written. Moreover, it requires an appraisal to be sufficiently descriptive to enable a reviewer to readily ascertain the estimated value reported and the rationale for that estimate. The appraisal may be in a narrative format or on a form chosen by an appraiser, but the appraisal must comply with all other provisions of the regulation. A form not initially designed for use in connection with federally related transactions may be used provided that it is modified as necessary to comply with the requirements of title XI and this regulation. Regardless of the format selected, the appraisal must be able to be readily understood by a third party and must reflect the complexity of the property that is appraised. This will enable the reader of the appraisal to independently determine its adequacy based upon the characteristics of the collateral appraised.

(5) *Sales history.* This standard is designed to enable a reader of an appraisal to compare an appraiser's opinion of a property's market value with recent sales prices. In addition to giving the reader a basis by which to evaluate the accuracy of the subject property appraisal, it also will assist the reader in identifying recent trends in market prices. For instance, a sales history may identify a single sale or a series of sales at artificially inflated prices.

Sales histories are required for one year for 1-to-4 family residential property and for three years for all other types of property. A more demanding reporting standard for nonresidential property is appropriate in view of (i) the typically lower frequency of turnover of such properties and (ii) the fact that larger loan amounts are generally granted (and hence larger risk to the regulated institution incurred) when the loan security is not a 1-to-4 family dwelling.

(6) *Revenues, expenses, and vacancies.* An appraisal should disclose current income produced by a property if the property will continue to be used to generate income after a transaction is consummated. This information is essential for an accurate picture of the market value of an income-producing property. Appraisal values should be predicated upon current revenues, expenses, and vacancies for properties utilized in such a manner. That is, appraisals should be based upon income that can realistically be earned under current market and economic conditions (in light of revenues being earned on comparable properties), rather than upon estimated or projected income that cannot be supported by current market conditions. If an appraiser reports a high current vacancy, this condition may require a lender to impose special conditions on the loan.

(7) *Marketing period.* This standard requires an appraiser to employ a marketing period that is reasonable in light of a given property's characteristics and market conditions, and to disclose the assumptions used. An appraiser's opinion of market value will depend in part on the appraiser's estimate of how long a given piece of property will remain for sale. For instance, an appraisal using a long marketing period is likely to produce a higher market value than would an appraisal using a shorter marketing period. This information will better enable the reader of the appraisal to assess its accuracy.

(8) *Trend analysis.* An appraisal should inform the reader of any market trends, regardless of whether the trend reflects rising or declining values. Such trends might include, for example, increasing vacancy rates, greater use of rent concessions, or declining sales prices. Identification of negative trends is particularly important so that a regulated institution may avoid extending credit on the basis of insufficient collateral. Market trends may be indicated in market activity on the subject property, such as listings, options, or sales agreements; accordingly, such activity should be disclosed.

(9) *Deductions and discounts.* This standard is designed to avoid having appraisals prepared using unrealistic assumptions. For federally related transactions, an appraisal is to include, among other values, an "as is" value; this is the value of the property in its current physical condition and subject to the zoning in effect as of the date of the appraisal. For properties where improvements are to be constructed or rehabilitated, the regulated institution may also request a value based on stabilized occupancy or a value based on the sum of retail sales. However, the sum of retail sales for a proposed development is not the market value of the development. For proposed developments that involve the sale of individual houses, units, or lots, the appraiser must analyze and report appropriate deductions and discounts for holding costs, marketing costs and entrepreneurial profit. For proposed and rehabilitated rental developments, the appraiser must make appropriate deductions and discounts for items such as leasing commissions, rent losses, and tenant improvements from an estimate based on stabilized occupancy.

(10) *Prohibited influences.* All appraisals are to be performed without pressure from someone who desires a specific value. Accordingly, every appraisal rendered in connection with a federally related transaction shall include a statement to the effect that employment of the appraiser was not conditioned upon the appraisal producing a specific value or a value within a given range. Similarly, future employment prospects should not be dependent upon an appraisal producing a specified value. Employment and compensation should not be based on whether a loan application is approved, as this, too, would exert pressure on an appraiser to render whatever appraisal is necessary for the loan to be approved.

(11) *Self-contained appraisals.* This standard requires an appraisal to contain all information necessary to enable a reader of an appraisal to understand the appraiser's opinion. The appraisal should not incorporate by reference a document that is not readily available to the reader. Studies prepared by a third party should be verified to the extent his or her assumptions or conclusions are used. In addition, the appraiser's acceptance or rejection of a third party study and its impact on value should be fully explained. The appraisal itself should enable the reader to understand the conclusion without having to refer to numerous other documents. Moreover, the conclusion must be reasonable in light of the information set forth in the appraisal. These requirements will force an appraiser to obtain adequate data before issuing an opinion of value.

(12) *Legal description.* A legal description of the property is to be included in an appraisal so as to avoid confusion that may arise from less precise identification. The description of real property contained in a deed will satisfy this requirement. This requirement enables a reader to compare the legal description in the appraisal to the legal description in the loan documents. The legal description is to be provided in addition to, and not in lieu of, the description required in the USPAP.

(13) *Personal property, fixtures, and intangible items.* An appraisal is to

include a separate assessment of personal property, fixtures, or intangible items that are attached to or located on real property if the personal property, fixture, or intangible item affects the market value of the real property. Furniture and fixtures should have separate valuations because their economic life may be shorter than real property improvements and may require special lending or investment considerations. If the personal property, fixture, or intangible item is not a part of the transaction, then this fact should be stated and the impact on market value should be disclosed. Favorable loan financing or any business interest or other intangible item should be valued separately within the appraisal. These requirements will help provide a reader with a more complete understanding of the market value of the real property as it will be at the time the transaction is entered into.

(14) *Use of recognized appraisal approaches.* At the request of clients, some appraisers have not prepared cost estimates of value, estimates of value based on the capitalization of income, or value estimates based on direct sales comparisons. This standard requires an appraiser to address each of these recognized approaches to market value. If in the judgment of the appraiser one or more approaches is not appropriate, then the appraiser is to explain the decision to use a particular approach. This requirement is intended to produce appraisals made only after the three major approaches to market value have been considered and (where appropriate) reconciled, thereby improving the accuracy of the appraisal. Disclosure of the fact that an approach was not used will assist the reader in evaluating the adequacy of the appraisal.

(b) *Unavailability of information.* The Board realizes that some information required by the USPA or this regulation to be in an appraisal may, on occasion, be unavailable. For example, historic rents will not exist for a building under construction at the time of appraisal. However, an appraisal should inform the reader of any material information that is unavailable and why such information could not be obtained, so as to assist the reader in reviewing the appraisal.

(c) *Additional standards.* The standards required by this regulation are the minimum standards to be met by every appraisal made in connection with a federally related transaction. However, regulated institutions may employ additional standards if circumstances so warrant.

Section 225.65 Appraiser Independence

An appraiser's goal should be to produce an objective opinion about the market value of a property. This objectivity may be compromised if the appraiser is involved in the transaction, such as deciding whether to extend credit to be secured by such property. Similarly, a direct or indirect interest in the property appraised may undermine the accuracy of the appraisal. A direct interest would arise, for example, by owning all or part of property being appraised. An indirect interest would arise if, for example, an appraiser owns property adjacent to the parcel being appraised. This indirect interest would extend to any property whose value is likely to be affected by an appraisal, if the appraisal is the proximate cause for the effect. Moreover, the interest may be nonpecuniary, such as a desire to help an associate obtain a loan.

To further the goal of appraiser independence, the Board requires that fee appraisers (that is, appraisers hired by a regulated institution for a particular appraisal assignment) be hired by a regulated institution or its agent rather than the borrower. An appraisal performed at the request of one regulated institution may be used by another if the latter institution has adequately reviewed the appraisal, documented such review, and found the appraisal to have complied with this regulation. In order to avoid potential conflicts of interest, staff appraisers (appraisers that are employees of a regulated institution) should not be supervised, controlled, or influenced by loan underwriters, loan officers, or collection officers within the institution.

The Board recognizes that in certain cases it may be necessary for loan officers and directors to perform appraisals. Such cases would depend on a bank's particular circumstances; an example would be a small rural bank where the only qualified individual to perform appraisals is a loan officer, and separating this person from the loan and collection departments is impossible. In such situations, this individual should perform appraisals only of real property serving as collateral for loans with which he or she is not otherwise involved. In cases where loan officers or directors perform appraisals, regulated institutions are expected to ensure that the appraisers are qualified and that appraisal reports are adequate.[11]

[11] It should be noted that directors and officers who perform appraisals in connection with federally related transactions must be licensed or certified, as appropriate.

Directors and officers should abstain from any vote and/or approval involving assets on which they had performed an appraisal. In all, sufficient safeguards should be in place to permit appraisers to exercise independent judgment, thereby ensuring the validity of the appraisal process.

Section 225.66 Professional Association Membership; Competency

(a) *Membership in appraisal organizations.* The legislative history of title XI evidences an intent to prohibit discrimination against appraisers solely by virtue of membership or lack of membership in a particular appraisal organization.[12] Accordingly, this regulation prohibits any entity covered by title XI from basing decisions regarding the employment of appraisers solely on membership or lack of membership in an appraisal organization. An institution should review the qualifications of appraisers rather than the qualifications of appraisal organizations to insure that a qualified individual is being employed. Membership in an organization may be considered; however, it may not be the sole determining factor in accepting or rejecting an appraiser.

(b) *Competency.* Not all appraisers are competent to perform every type of appraisal that will be needed in connection with federally related transactions. For instance, an appraiser who is experienced in appraising shopping centers may not possess sufficient expertise to appraise a golf course. A financial institution should look beyond an individual's designation or affiliation to determine if he or she has the experience and training needed to perform the appraisal. This provision is not intended to prohibit, in every circumstance, an individual from appraising a type of property with which he or she is not familiar. However, in such instances, an appraiser may perform the appraisal only in accordance with the Competency Provision in the USPAP. In addition, an individual who is not a State certified or licensed appraiser may assist in the preparation of an appraisal if he or she is directly supervised by a licensed or certified appraiser (as appropriate), and the appraisal is approved and signed by a certified or licensed appraiser.

Section 225.67 Enforcement

Section 1120 of FIRREA vests the Board with the authority to bring an

[12] *See, e.g.,* House Banking Committee Report at 484; *see also* H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess., at 457 (1989).

action for civil money penalties against a regulated institution within the agency's primary jurisdiction. The regulation makes clear that additional enforcement remedies also are available to the Board under the Federal Deposit Insurance Act and other applicable statutes. These can include civil money penalties and cease and desist orders, as well as orders of removal and prohibitions against institutions and institution-affiliated parties. FIRREA specifically provides that the phrase "institution-affiliated parties" includes, but is not limited to, appraisers.[13]

Differences Between the Agencies

The federal financial institutions regulatory agencies and the RTC have attempted to develop uniform regulations regarding the appraisal requirements for federally related transactions. However, as of the date of publication of this regulation, the agencies and the RTC have the following principal differences.

1. *De minimis test.* The Board does not require a State certified or licensed appraiser for real estate-related financial transactions having a transaction value less than or equal to $100,000. The OTS provides for no *de minimis* test.

2. *Use of licensed appraisers.* The Board allows State licensed appraisers to perform appraisals of property not involving 1-to-4 family residential property ("nonresidential property") if the transaction value is less than $250,000. The NCUA requires any appraisal of nonresidential property to be performed by a State certified appraiser.

Regulatory Flexibility Act Analysis

Title XI of FIRREA requires the Board to establish standards for performing appraisals in connection with federally related transactions and to distinguish those transactions that require State certified appraisers from those that require State certified or licensed appraisers. This regulation is in response to this statutory requirement.

The Board anticipates that the proposed regulatory changes will increase the cost of federally related transactions for regulated institutions, to the extent that the institutions are required to perform appraisals that they otherwise would not undertake or are required to perform appraisals in a different manner. Since FIRREA contains no exception for small institutions, the Board expects that their costs will rise somewhat under these circumstances if the costs are not passed on to their customers. Weighed against these increased costs should be savings to the regulated institutions that might arise from better loan documentation generated under the regulation, which may enable the institution to improve its risk evaluation and avoid potential loan losses.

After considering the comments received, the Board has made a number of significant changes to the initial draft that should help to reduce costs, particularly for smaller institutions, and to focus the regulation on those transactions where appraisal standards are most important. The principal changes are as follows:

1. The *de minimis* cutoff has been raised to $100,000, thus eliminating smaller loans from the requirements of this regulation and focusing the regulation on those large transactions where the possibility of loss is large. Because many of these latter transactions would normally involve an appraisal under current practices, the marginal cost of mandatory appraisals is likely to be relatively insignificant, at least after a period of adjustment to the new requirements.

2. The revised regulation permits competent State licensed appraisers, rather than only State certified appraisers, to perform any type of appraisal in transactions involving amounts up to $250,000. This should help minimize the costs to smaller institutions that concentrate on these smaller loans.

3. The revised regulation also expands the number of instances when licensed appraisers may be used, first, by allowing licensed appraisers to be used for all non-complex appraisals of 1-to-4 family residential property with transaction values up to $1,000,000 and, second, by eliminating the proposed additional criterion that the transaction value be below the lesser of $1,000,000 or 10 percent of Tier 1 capital.

4. The revised regulation clarifies that most appraisals of 1-to-4 family residential property will be presumed to be non-complex, and therefore appropriate for State licensed appraisers to perform, provided that the transaction value is less than $1,000,000.

5. Finally, the revised regulation exempts from appraisal requirements under this regulation certain additional types of transactions, including transactions resulting from a maturing extension of credit under certain circumstances, leases that are not the economic equivalent of a purchase, and purchases of pooled loans or interests in real property if conforming appraisals have been performed.

Paperwork Reduction Analysis

The revisions to Regulation H and Regulation Y in this rulemaking that relate to recordkeeping requirements were approved by the Board under authority delegated to it by the Office of Management and Budget, in accordance with section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35, and part 1320 of title 5, Code of Federal Regulations, 5 CFR part 1320.

In developing these revisions, the Board has consulted with the OCC, the FDIC, the OTS, the NCUA, and the RTC; under title XI, those agencies must adopt substantially similar regulations. These revisions to Regulations H and Y implement the provisions of title XI of FIRREA and affect state member banks ("SMBs"), bank holding companies, and the nonbank subsidiaries of bank holding companies ("BHC subs"), which must review and evaluate the required appraisals for federally related transactions.

The Federal Reserve System estimates that 1,183 institutions will be affected by these recordkeeping requirements. Each federally related transaction is expected to require, on average, 15 minutes for review and recordkeeping. The total reporting burden is estimated to be 31,930 hours, as calculated below, which represents less than one percent of total annual System reporting burden.

	Number of respondents	×	Annual frequency	×	Estimated average number of hours per response	=	Total annual burden hours
SMBs	1,073		86		.25		23,070
BHC subs	110		322		.25		8,855
Total	1,183						31,925

[13] *See* FIRREA, §§ 204(f)(6) and 901(b)(1).

List of Subjects

12 CFR Part 208

Accounting, Agricultural loan losses, Applications, Appraisals, Banks, Banking, Branches, Capital adequacy, Confidential business information, Dividend payments, Federal Reserve System, Flood insurance, Publication of reports of condition, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in this document, the Board amends 12 CFR parts 208 and 225 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 is revised to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814 and 1823(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101–1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

2. Section 208.18 is added to read as follows:

§ 208.18 Appraisal standards for federally related transactions.

The standards applicable to appraisals rendered in connection with federally related transactions entered into by state member banks are set forth in subpart G of the Board's Regulation Y, 12 CFR part 225.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, and 3909; and sections 1101–1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

2. Subpart G, consisting of §§ 225.61 through 225.61, is added immediately following subpart F to read as follows:

Subpart G—Appraisals

Sec.

Subpart G—Appraisals

§ 225.61 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (the "Board") under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. No. 101–73, 103 Stat. 183 (1989)), 12 U.S.C. 3310, 3331–3351, and section 5(b) of the Bank Holding Company Act, 12 U.S.C. 1844(b).

(b) *Purpose and scope.* (1) Title XI provides protection for federal financial and public policy interests in real estate related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This subpart implements the requirements of title XI, and applies to all federally related transactions entered into by the Board or by institutions regulated by the Board ("regulated institutions").

(2) This subpart:

(i) Identifies which real estate-related financial transactions require the services of an appraiser;

(ii) Prescribes which categories of federally related transactions shall be appraised by a State certified appraiser and which by a State licensed appraiser; and

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of the Board.

§ 225.62 Definitions.

(a) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(b) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(d) *Complex 1-to-4 family residential property appraisal* means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

(e) *Federally related transaction* means any real estate-related financial transaction entered into on or after August 9, 1990, that:

(1) The Board or any regulated institution engages in or contracts for; and

(2) Requires the services of an appraiser.

(f) *Market value* means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(g) *Real estate-related financial transaction* means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(h) *State certified appraiser* means any individual who has satisfied the requirements for certification in a State or territory whose criteria for certification as a real estate appraiser currently meet or exceed the minimum criteria for certification issued by the Appraiser Qualifications Board of the Appraisal Foundation. No individual shall be a State certified appraiser unless such individual has achieved a passing grade upon a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA. The Board may, from time to time, impose additional qualification criteria for certified appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(i) *State licensed appraiser* means any individual who has satisfied the requirements for licensing in a State or territory where the licensing procedures comply with title XI of FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI. The Board may, from time to time, impose additional qualification criteria for licensed appraisers performing appraisals in connection with federally related transactions within the Board's jurisdiction.

(j) *Tract development* means a project of five units or more that is constructed or is to be constructed as a single development.

(k) *Transaction value* means:

(1) For loans or other extensions of credit, the amount of the loan or extension of credit;

(2) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

(3) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or the market value of the real property calculated with respect to each such loan or interest in real property.

§ 225.63 Appraisals not required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals not required.* An appraisal performed by a State certified or licensed appraiser is not required for any real estate-related financial transaction in which:

(1) The transaction value is $100,000 or less;

(2) A lien on real property has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

(3) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(4) There is a subsequent transaction resulting from a maturing extension of credit, provided that:

(i) The borrower has performed satisfactorily according to the original terms;

(ii) No new monies have been advanced other than as previously agreed;

(iii) The credit standing of the borrower has not deteriorated; and

(iv) There has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection; or

(5) A regulated institution purchases a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities, provided that the appraisal prepared for each pooled loan or real property interest met the requirements of this regulation, if applicable.

Any transaction for which a State certified or licensed appraiser is not required nevertheless must have an appropriate evaluation of real property collateral that is consistent with the Board's Guidelines for Real Estate Appraisal Policies and Review Procedures.

(b) *Transactions requiring a State certified appraiser.—*

(1) *All transactions of $1,000,000 or more.* All federally related transactions having a transaction value of $1,000,000 or more shall require an appraisal prepared by a State certified appraiser.

(2) *Nonresidential transactions of $250,000 or more.* All federally related transactions having a transaction value of $250,000 or more, other than those involving appraisals of 1-to-4 family residential properties, shall require an appraisal prepared by a State certified appraiser.

(3) *Complex residential transactions of $250,000 or more.* All complex 1-to-4 family residential property appraisals rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is $250,000 or more. A regulated institution may presume that appraisals of 1-to-4 family residential properties are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

(c) *Transactions requiring either a State certified or licensed appraiser.* All appraisals for federally related transactions not requiring the services of a State certified appraiser shall be prepared by either a State certified appraiser or a State licensed appraiser.

§ 225.64 Appraisal standards.

(a) *Minimum standards.* For federally related transactions, all appraisals shall, at a minimum:

(1) Conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation, except that the Departure Provision of the USPAP shall not apply to federally related transactions;

(2) Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of the USPAP;

(3) Be based upon the definition of market value as set forth in § 225.62(f);

(4)(i) Be written and presented in a narrative format or on forms that satisfy all the requirements of this section;

(ii) Be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate; and

(iii) Provide detail and depth of analysis that reflect the complexity of the real estate appraised;

(5) Analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

(i) For 1-to-4 family residential property, one year preceding the date when the appraisal was prepared; and

(ii) For all other property, three years preceding the date when the appraisal was prepared;

(6) Analyze and report data on current revenues, expenses, and vacancies for the property if it is and will continue to be income-producing;

(7) Analyze and report a reasonable marketing period for the subject property;

(8) Analyze and report on current market conditions and trends that will affect projected income or the absorption period, to the extent they affect the value of the subject property;

(9) Analyze and report appropriate deductions and discounts for any proposed construction, or any completed properties that are partially leased or leased at other than market rents as of the date of the appraisal, or any tract developments with unsold units;

(10) Include in the certification required by the USPAP an additional statement that the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan;

(11) Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the market value reported;

(12) Include a legal description of the real estate being appraised, in addition to the description required by the USPAP;

(13) Identify and separately value any personal property, fixtures, or intangible items that are not real property but are included in the appraisal, and discuss the impact of their inclusion or exclusion on the estimate of market value; and

(14) Follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used.

(b) *Unavailability of information.* If information required or deemed pertinent to the completion of an appraisal is unavailable, that fact shall be disclosed and explained in the appraisal.

(c) *Additional standards.* Nothing contained herein shall prevent a regulated institution from requiring additional appraisal standards if deemed appropriate.

§ 225.65 Appraiser independence.

(a) *Staff appraisers.* If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the regulated institution, the regulated institution shall take appropriate steps to ensure that the appraisers exercise independent judgment and that the appraisal is adequate. Such steps include, but are not limited to, prohibiting an individual from performing appraisals in connection with federally related transactions in which the appraiser is otherwise involved and prohibiting directors and officers from participating in any vote or approval involving assets on which they performed an appraisal.

(b) *Fee appraisers.* If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or transaction. A regulated institution may accept an appraisal that was prepared by an appraiser engaged directly by another institution subject to title XI of FIRREA, if the regulated institution that accepts the appraisal has:

(1) Established procedures for review of real estate appraisals;

(2) Reviewed the appraisal under the established review procedures, finding the appraisal acceptable; and

(3) Documented the review in writing.

§ 225.66 Professional association membership; competency.

(a) *Membership in appraisal organizations.* A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee appraisers performing appraisals in connection with federally related transactions must be State certified or licensed, as appropriate. However, a State certified or licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

§ 225.67 Enforcement.

Institutions and institution-affiliated parties, including staff appraisers and fee appraisers, may be subject to removal and/or prohibition orders, cease and desist orders, and the imposition of civil money penalties pursuant to the Federal Deposit Insurance Act, 12 U.S.C 1811 *et seq.*, as amended, or other applicable law.

Board of Governors of the Federal Reserve System, June 27, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-15401 Filed 7-3-90; 8:45 am]

BILLING CODE 6210-01-M

federal register

Thursday,
July 5, 1990

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201

Labeling for Oral and Rectal Over-the-Counter Aspirin and Aspirin-Containing Drug Products; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N-0169]

RIN 0905-AA06

Labeling for Oral and Rectal Over-the-Counter Aspirin and Aspirin-Containing Drug Products; Final Rule

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to require that the labeling of oral and rectal over-the-counter (OTC) aspirin and aspirin-containing drug products for human use bear a warning that such products should not be used during the last 3 months of pregnancy unless directed by a doctor. FDA is issuing this final rule after considering the report and recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products, public comments on the agency's proposed regulation for these OTC drug products, which was issued in the form of a tentative final monograph, and all new data and information that have come to the agency's attention. FDA is taking this action in order to alert pregnant women that aspirin or aspirin-containing drug products taken without medical supervision during the last 3 months of pregnancy may cause problems in the unborn child or complications during delivery.

EFFECTIVE DATE: August 6, 1990. Manufacturers of affected drug products initially introduced or initially delivered for introduction into interstate commerce will have until July 5, 1991 to comply with the labeling requirement set forth in 21 CFR 201.63(e).

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of July 8, 1977 (42 FR 35346), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, together with the recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (Internal Analgesic Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. One of the Panel's recommendations was that OTC drug products containing aspirin and carbaspirin calcium bear the following warning: "Do not take this product during the last three months of pregnancy except under the advice and supervision of a physician." This recommendation was based on the Panel's evaluation of data that led it to conclude that acute aspirin use during pregnancy could prolong the duration of labor, increase maternal blood loss both before and after delivery, and cause a change in the hemostatic mechanisms of the newborn child (42 FR 35346 at 35402). For these reasons, the Panel concluded that the acute use of aspirin during the third trimester of pregnancy poses a potential hazard and the above-cited warning should appear on all OTC aspirin-containing drug products (42 FR 35346 at 35405). Interested persons were invited to file comments by December 5, 1977. Reply comments in response to the comments filed in the initial comment period could be filed by February 6, 1978.

In accordance with § 330.10(a)(10) the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products, two trade associations, several drug manufacturers, many health professionals, several consumers, a drug standard-setting association, two health professional associations, a health foundation, and one consumer group submitted comments. However, none of these comments discussed the Panel's proposed warning against the use of aspirin-containing products in the third trimester of pregnancy.

The agency's proposed regulation, in the form of a tentative final rule, for OTC internal, antipyretic, and antirheumatic drug products was published in the Federal Register of November 16, 1988 (53 FR 46204). As part of its proposed regulation, the agency expanded the Panel's proposed warning concerning the use of aspirin-containing products during the last 3 months of pregnancy in order to inform consumers of the reason for the warning, as follows: "IMPORTANT: Do not take this product during the last 3 months of pregnancy unless directed by a doctor. Aspirin taken near the time of delivery may cause bleeding problems in both mother and child" (53 FR 46253). This warning appeared in § 343.50(c)(1)(iv)(B) of the tentative final monograph. The agency further proposed that the warning follow the general pregnancy warning in § 201.63 that is required for all OTC drugs that are intended for systemic absorption, which includes oral and rectal aspirin and aspirin-containing drug products. Interested persons were invited to file by May 16, 1989, written comments, or objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 16, 1989. New data could have been submitted until November 16, 1989, and comments on the new data until January 16, 1990.

In a notice published in the Federal Register of January 16, 1990 (55 FR 1471), the agency advised that it was extending to March 16, 1990, the period for comments on new data for the notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products.

Five manufacturers, two trade associations, and one consumer submitted comments on the proposed third trimester pregnancy warning for OTC aspirin-containing drug products. There was one request for a hearing. Copies of the comments and the hearing request are on public display in the Dockets Management Branch. Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch. In proceeding with this final rule, the agency has considered all comments, new data, and the request for an oral hearing related to this issue.

II. Highlights of the Final Rule

This final rule requires a new warning statement for all OTC oral and rectal aspirin and aspirin-containing drug products. This new warning statement must appear in boldface type and all capital letters and immediately follow the general pregnancy-nursing warning statement required by § 201.63, under the heading "Warinings," as follows:

As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product. IT IS ESPECIALLY IMPORTANT NOT TO USE" (select "ASPIRIN" or " CARBASPIRIN CALCIUM," as appropriate) "DURING THE LAST 3 MONTHS OF PREGNANCY UNLESS SPECIFICALLY DIRECTED TO DO SO BY A DOCTOR BECAUSE IT MAY CAUSE PROBLEMS IN THE UNBORN CHILD OR COMPLICATIONS DURING DELIVERY."

The agency has determined that this new warning statement concerning use during the last 3 months of pregnancy should appear in the labeling of OTC aspirin and aspirin-containing drug products prior to finalization of the monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products in order to alert pregnant women of the additional conditions under which these OTC drug products should not be used without medical supervision. The agency notes that similar warnings have been approved in new drug applications for OTC ibuprofen-containing drug products (an OTC analgesic similar to aspirin) for more than 5 years.

III. Summary of the Comments

The agency received 10 comments on its proposed third trimester warning for aspirin and aspirin-containing drug products. One comment endorsed the agency's proposed warning, which was as follows: "IMPORTANT: Do not take this product during the last three months of pregnancy unless directed by a doctor. Aspirin when taken near the time of delivery may cause bleeding problems in both mother and child." Several comments, including one from a trade association, recommended that the agency's proposed warning be deleted. Several of the comments contended that the warning, when used in conjunction with the general pregnancy warning required by § 201.63 ("As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product.") may confuse and unduly frighten consumers.

One comment noted that the Panel's recommendation in 1977 for an aspirin pregnancy warning was made before the agency implemented its requirement in 1982 for a general pregnancy-nursing warning for all drugs intended for systemic absorption. Other comments contended that the agency's proposed warning is unnecessary and that the general pregnancy warning is adequate to inform pregnant consumers of the need to consult a trained health professional prior to using OTC drug products containing aspirin. Another comment argued that the two warnings taken together would reduce the likelihood that consumers will follow the directions of the general warning to consult a doctor before use of these products during the first six months of pregnancy. The comment concluded that the agency's proposed warning could result in the inappropriate use of OTC aspirin drug products during pregnancy.

Another comment stated that the warning could cause consumer confusion. The comment asserted that the first sentence of the proposed warning could lead consumers to believe that there may be circumstances in which a woman in the third trimester of pregnancy should take aspirin when directed to do so by a doctor, while the second portion of the proposed warning clearly says that the use of aspirin near the time of delivery may cause bleeding problems in both mother and child. Another comment argued that the agency's proposed warning could lead a consumer to assume that aspirin taken prior to the last trimester is completely without risk. The comment stated its belief that the explicit speculation included in the proposed warning goes beyond responsible regulation and that it may frighten consumers who have been prescribed aspirin during pregnancy for legitimate medical needs.

One comment warned that the proliferation of warnings proposed for inclusion in the labeling of these OTC drug products carries with it the risk that the effectiveness of the warnings may be diluted, so that truly significant warnings will be overlooked by consumers. The comment recommended use of a single warning instead of several specific warnings dealing with the same subject. Citing the agency's proposed third trimester pregnancy warning as an example, the comment suggested that the general pregnancy warning and the agency's proposed warning be combined, to read as follows: "As with any drug, if you are pregnant or nursing a baby, do not take unless directed by a doctor. This is particularly important for aspirin during the last 3 months of pregnancy since it may cause bleeding problems in mother or child." The comment contended that the combined warning would be more effective and requested a hearing if the agency disagrees with its position on this issue.

One comment questioned the need for the additional warning for two reasons: (1) Lack of evidence demonstrating the need for such a warning and (2) lack of evidence that the general pregnancy warning is ineffective in accomplishing the goal of the more specific proposed warning. The comment further questioned the need for the proposed warning based on two studies (Refs. 1 and 2) that suggest that low daily doses (60 or 100 milligrams (mg)) of aspirin taken during the third trimester of pregnancy may reduce the incidence of pregnancy-induced hypertension and preeclamptic toxemia in women at risk from these conditions. The comment cautioned that the agency's proposed warning may jeopardize a woman's compliance with this promising new use of aspirin and may therefore interfere with the physician-patient relationship.

Another comment submitted a study (Ref. 3) designed to assess whether there is an association between third trimester aspirin use and an increase in the incidence of stillbirths or in the degree of neonatal bleeding, maternal bleeding, length of gestation, or length of labor. Subsequently, the comment submitted another analysis of the same data base (Ref. 4), which assesses the effect of aspirin use in the last 10 days of pregnancy. The comment asserted that these data demonstrate that a third-trimester pregnancy warning for aspirin is not necessary.

Subsequently, the trade association, which had requested deletion of the proposed warning, noted the more recently submitted new scientific information (Refs. 3 and 4) and requested that the agency resolve the third-trimester pregnancy warning for OTC aspirin-containing drug products without awaiting resolution of the other issues presented in the tentative final monograph. Numerous legal precedents were cited to support its suggestion (Ref. 5). The comment added that FDA has finalized labeling regulations outside the OTC drug review monograph process, mentioning the general pregnancy-nursing warning in § 201.63. That warning applied to OTC aspirin-containing drug products, and other marketed OTC drugs, prior to issuance of a final monograph. The comment recommended that the agency publish expeditiously a final rule that would require, if appropriate, the following third-trimester pregnancy warning on the labeling of all OTC aspirin and aspirin-containing analgesic-antipyretic drug products: "Do not use this product during the last 3 months of pregnancy unless advised to do so by a doctor because it may cause problems during delivery." The comment contended that the language of its proposed warning is consistent with the third-trimester warning language that now appears on the OTC analgesic ibuprofen. The comment asserted that this warning is likely to receive nationwide acceptance and thereby maintain national uniformity in the labeling of aspirin and other OTC analgesics. The comment also recommended that the final rule provide that warnings may be combined to eliminate duplicative words or phrases so that the resulting warnings are clear and understandable, as proposed in the tentative final monograph.

IV. The Agency's Conclusions on the Comments

The agency has determined that the third-trimester pregnancy warning should be finalized before resolution of the other matters pending in the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products. The agency is finalizing this warning for OTC aspirin-containing drug products now, in order to ensure that consumers have adequate information concerning the use of these products during the third trimester of pregnancy. This will enable consumers to make intelligent and informed decisions concerning their safe use.

The agency does not agree with the comments that contend that the agency's proposed third-trimester pregnancy warning is unnecessary in light of the general pregnancy warning already required to appear on these OTC drug products. However, after reviewing the Panel's conclusions, the submitted comments, and the recently available data on this issue, the agency now believes that a specific reference to bleeding as proposed in the tentative final monograph (53 FR 46204 at 46253) is not necessary. Use of aspirin during the third trimester poses potential risks. Therefore, the agency believes that it is important that consumers be specially advised not to use aspirin and aspirin-containing OTC drug products during the third trimester of pregnancy unless directed to do so by a doctor.

In a recent study by Brent, Shook, and Wilson (Ref. 3), the outcomes of pregnancies in which aspirin was used during the third trimester of pregnancy were compared to the outcomes of pregnancies in which no aspirin was used. The study also evaluated the effect of different aspirin exposure levels during the third trimester and the last month of pregnancy. The data base used in this study was generated by the National Collaborative Perinatal Project (NCPP), sponsored by the National Institutes of Health. This data base resulted from a comprehensive multicenter study that monitored approximately 58,000 pregnancies and their outcomes during a 16-year period (1959–1974) in an effort to clarify the etiology of cerebral palsy and mental retardation. The study collected information from participating women on many factors that may have affected cerebral palsy and mental retardation such as other conditions, disease states, medications, treatments, education, socio-economic level, sex of the neonate, and others. This information was collected from participating women on an ongoing basis from the time they were diagnosed as pregnant and continuing through delivery. Information also was collected on the neonates from the time of delivery until age eight.

Subjects were included in the analysis by Brent, Shook, and Wilson when the NCPP data base contained a record of the outcome of the pregnancy and information indicating whether or not aspirin was used. Aspirin exposure was recorded as "low dose" (subject took aspirin on only 1 day in a lunar month), "medium dose" (subject took aspirin on 2 to 7 days in a lunar month), and "high dose" (subject took aspirin on more than 7 days in a lunar month). However, neither the total dose of aspirin taken on any given day nor the total number of days of aspirin use if over 8 days was reported.

The study evaluated five endpoints: incidence of stillbirths, degree of neonatal bleeding, maternal bleeding, length of gestation, and length of labor. Because neonatal bleeding was not directly recorded in the NCPP data base, data on neonatal intracranial bleeding, neonatal hematocrit, and neonatal hemoglobin (after 48 hours) were analyzed to give an estimate of the degree of neonatal bleeding. The authors stated that a reduction in hematocrit by 0.6 percent after 48 hours or a reduction in hemoglobin by 0.2 gram (g) indicated a blood loss of approximately 1 percent. Both stillbirth and neonatal intracranial bleeding were noted as either present or absent, while the other outcomes were measured on a continuous scale.

Other factors which when present during pregnancy may have influenced the above uncorrected risk estimates were identified from previous literature and tested for possible influence on study outcomes. The other factors analyzed for included 62 non-drug factors and 27 categories of drugs. Each of these covariables was tested to determine whether it was associated with the unadjusted risk of the investigated outcomes and whether it was associated with the use of aspirin in the study. The unadjusted risk assessments for the evaluated outcomes were then corrected for each of these covariables simultaneously and both unadjusted and adjusted results were reported.

Pregnancies in which the above outcomes were recorded were evaluated by comparing aspirin-exposed pregnancies to unexposed pregnancies. The proportions of women who demonstrated one of these outcomes and who were exposed to aspirin in one of three dosage groups during the last 3 months of pregnancy were compared to the proportions of women in the group with no aspirin exposure. The exposure groups were: (1) Any exposure to aspirin regardless of doses, (2) low-dose group, and (3) high-dose group. In addition to the evaluation of the effects of aspirin exposure during the third trimester of pregnancy, women exposed at the high and low dose during the last month of pregnancy were compared to women not exposed to any aspirin during that time.

There was no statistically significant association of neonatal intracranial bleeding with any level of aspirin use in the third trimester or in the last month of pregnancy. The authors considered the data for these associations sufficient to detect a difference as small as 1 percent between any of the aspirin-user groups and the unexposed population, with a power of 90 percent or greater.

The mean neonatal hemoglobin of 18.2 g percent for the unexposed group was not changed significantly for any level of aspirin exposure during either the third trimester or the last month of pregnancy. However, the low-dose exposure during the last month suggests a decrease in the mean hemoglobin level of 0.1 g percent, indicating less blood loss among the unexposed group. An adjustment of the data for the last month of pregnancy for covariables indicated that there is no significant difference between the two means when aspirin was considered independently. The authors considered the data for this outcome sufficient to detect a difference of 0.2 g percent between any of the aspirin-user groups and the exposed population, with a power of 90 percent.

The unadjusted third-trimester exposure data for the mean neonatal hematocrit indicated that the unexposed group had a significantly higher mean hematocrit (58.6 percent) than the exposed groups ($p < 0.001$). The results for the last-month exposure groups were essentially identical to those for the third-trimester exposure group. The data from both levels (low and high dose) indicate a small (less than 1 percent) but statistically signifcant decrease in the mean neonatal hematocrit. The authors reported that adjustment of the data for covariables removed the statistical significance of the difference for both exposure groups. The authors contend that the data for the 3-month exposure were sufficient to detect a difference of 0.3 percent hematocrit between any of the exposure groups and the unexposed group, with a power of 90 percent or greater.

With regard to maternal blood loss, the study reported that the mean loss of 226.2 milliliters (mL) of blood for the unexposed group was not significantly

different from any of the aspirin groups (< 5.1 mL) based on both the adjusted and unadjusted data. The data from the low- and high-dose exposures of aspirin during the last month of pregnancy also showed no statistically significant change in either the adjusted or unadjusted data. The authors point out that the maternal blood loss measurements for this study were based on delivery room estimates of the quantity of blood lost during delivery. The authors report that the data for this variable were sufficient to detect a difference of 8 mL of blood loss for the 3-month data and a 7-mL blood loss for the 1-month data between the unexposed and exposed populations, with a power of 90 percent or greater.

The study also attempted to ascertain whether or not there was a dose effect of aspirin over the third trimester of pregnancy by comparing subjects who were not exposed to aspirin to subjects with exposure to aspirin (1) Any time during the last trimester, (2) with low- and high-use aspirin exposure during the third trimester, and (3) with low- and high-use aspirin exposure during the last month.

The third-trimester low-dose aspirin exposure group included those subjects who ingested aspirin on only 1 day in the last month of pregnancy and during at least 1 other month of the last 3 lunar months of pregnancy. Where inclusion was based on a 2-month exposure, the remaining month had to have had no exposure. To qualify for the high-dose aspirin group, the subjects must have ingested aspirin on at least 8 days in the last month of pregnancy and during at least one more of the last 3 lunar months of pregnancy, with an intermediate exposure (2 to 6 days) in the month in which a high exposure was not recorded. The last-month low-use group included subjects whose aspirin ingestion was only 1 day during the last month. The high-use group included subjects that had ingested aspirin on at least 8 days during the last month. The authors reported that their analysis of data from the any-aspirin exposure group and the groups with high and low dose aspirin exposure during the third trimester and last month of pregnancy indicated no aspirin association for neonatal intracranial bleeding, neonatal hematocrit, and neonatal hemoglobin. Noting the fact that the data for maternal blood loss were not based on a precise quantitative measurement, which may affect the reliability of the results, the authors reported that there was no significant difference in maternal blood loss between the any-aspirin-exposure group and the unexposed group. The evaluation of the 3-month high- and low-dose groups, and the last month data, also indicated no difference.

In summary, the authors concluded that this extensive data base shows that the ingestion of aspirin in OTC doses during the last 3 months of pregnancy does not lead to a clinically relevant adverse result due to bleeding in any of the outcomes studied. According to the authors, the study indicated no increase in maternal bleeding or neonatal bleeding (as measured by either neonatal intracranial bleeding, neonatal hemoglobin, or neonatal hematocrit).

In a subsequent study (Ref. 4) of the same NCPP data base, the same authors examined the risks to mothers who were exposed to aspirin during the last 10 days before delivery. The study compared exposed mothers and their neonates (both premature and full-term infants) with those who were never exposed to aspirin during pregnancy. The study involved the analysis of three bleeding endpoints: neonatal intracranial bleeding, neonatal hemoglobin, and neonatal hematocrit. In addition, based on the assumption that there was no aspirin effect on these endpoints, a fourth indicator of possible intracranial bleeding at birth, the intelligence quotient (IQ) at 7 years of age, was analyzed.

Subjects were included in the study if their records indicated that they had used aspirin within the last 10 days before delivery or had not used aspirin at all during their pregnancy but had the outcome being evaluated. Premature infants were defined by a length of gestation of less than or equal to 33 weeks and a birthweight of less than 1,500 g. Full-term infants were defined as having a gestation period greater than or equal to 34 weeks and a birth weight equal to or greater than 1,500 g. The infants whose mothers were exposed to aspirin during the last 10 days of pregnancy were compared to infants born to mothers with no aspirin exposure during this same period. An analysis of maternal bleeding in the full-term population was also done. Detailed information regarding the number of tablets or capsules of aspirin-containing products that the subjects took was abstracted from information in the NCPP data base.

Neonatal intracranial bleeding was evaluated on the basis of the presence or absence of the condition. Neonatal hemoglobin, neonatal hematocrit, maternal bleeding, and IQ at 7 years were measured on a continuous scale. As in the study above, the data were analyzed for the effect of other factors which may have influenced the uncorrected risk estimates. However, the method of analysis used in this study differs from that of the previous study (Ref. 3) because only the effect of variables likely to have had an influence on the unadjusted results were analyzed for, rather than all 89 potential covariables.

For the outcome of neonatal intracranial bleeding in full-term infants, the study reported that there was no difference in the percentage of infants who experienced intracranial bleeding when a comparison between the exposed and unexposed groups was made. For the outcome of neonatal hemoglobin (after 48 hours), the aspirin-exposure group had a mean of 18.3 g percent, and the no aspirin-exposure group had a mean of 18.2 g percent. The difference between these two means was not statistically significant. The data from the aspirin-exposure and the no-aspirin-exposure groups indicated that the unadjusted mean hematocrit of the exposed infants (57.8 percent) was less than the value for the nonexposed infants (58.8 percent) and that the difference was statistically significant with a probability of 0.0001. The results showed on covariant analysis that aspirin exposure during the last 10 days of pregnancy had an opposite effect, i.e., it caused less effect on neonatal hematocrit than no aspirin exposure during this period. An assessment of the IQ at age 7 indicated a statistically significant increase ($p=0.0001$) in the IQ of infants at age 7 of the aspirin exposure group (96.0) over the unexposed group (96.1), but an adjustment of the data for the effects of covariables indicated no significant difference in IQ between the two groups.

Maternal bleeding was assessed in the same way it had been in the other study (Ref. 3). The authors stated that the analysis of these data was extremely difficult due to the large standard deviations and the skewed distributions of the blood loss which they attributed to the fact that the blood loss values were estimated and not measured. Comparison of the unadjusted means for the blood loss indicated the unexposed group lost 7.5 mL more blood than the exposed group. The difference was found to be statistically significant ($p = 0.002$). The authors reported that this result indicated that the use of aspirin during the last 10 days of pregnancy resulted in less blood loss at delivery; however, the difference of 7.5 mL (which is equivalent to 1½ teaspoons) is clinically insignificant.

A comparison of the incidence of neonatal intracranial bleeding in exposed and unexposed premature infants was not statistically significant (14.0 and 12.1 percent, respectively). The authors concluded that there is no significant increase in the risk of neonatal intracranial hemorrhage between the exposed and unexposed groups.

In the assessment of the data on premature neonatal hemoglobin (after 48 hours), the study indicated that the aspirin group showed significantly less neonatal hemoglobin than the no-aspirin-exposure group. However, when these results were adjusted for covariables that were deemed to have a significant effect on this outcome, there was no significant difference between the aspirin-exposure and no-exposure groups. The unadjusted mean hematocrit of the exposed infants was less than the value for the unexposed infants, but this difference was not statistically significant. When these results were corrected for covariables, the results also were not statistically significant. With regard to the assessment of IQ at 7 years, the study contained little data; and both the unadjusted and adjusted values indicated that there was no statistically significant difference.

The agency concludes that upon evaluation of all the available data, including the new uses discussed below, that aspirin used in the third trimester of pregnancy poses some potential risks, only one of which is bleeding. It is important to advise women in their third trimester of pregnancy to consult a doctor before using any OTC drug products containing aspirin or carbaspirin calcium. The agency continues to agree with the Panel and concludes that these products should bear a third-trimester pregnancy warning.

The Panel's conclusion that acute aspirin use during the third trimester of pregancy poses a potential risk for both mother and infant was based on its evaluation of data on the effects of aspirin on various aspects of pregnancy as extensively reported in the literature through 1977 (42 FR 35346 at 35399). In addition to its concerns about the changing of the hemostatic mechanisms in the newborn and increasing maternal blood loss, the Panel's discussion of the evaluated data regarding the effects of aspirin or carbaspirin calcuim on pregnancy also included other effects of these ingredients on pregnancy. Such other effects are due to multiple effects of prostaglandin inhibition on the fetus and on delivery.

The Panel noted that Tuchman-Duplessis et al. (Ref. 6) reported that the administration of 200 mg/kilogram (kg)/day of aspirin to rats during the last 6 days of pregnancy resulted in a prolongation of the duration of pregnancy, a prolongation of parturition, and appearance of dystocia (abnormal labor) in some animals, which the authors speculated resulted in the possible secondary death of the fetuses in utero. The authors reported that 70 percent of the control dams delivered on day 21 of pregnancy, while only 18 percent of the treated dams did ($p < 0.05$).

The Panel noted that Lewis and Schulman (Ref. 7) reported the results of a 20-year retrospective study designed to evaluate the influence of aspirin on the duration of human gestation and labor of 103 aspirin-treated subjects. The study compared subjects (most of whom had nonspecific collagen disease or degenerative musculoskeletal disease) taking doses of greater than 3,250 mg of aspirin a day during the last 6 months of pregnancy to two control groups. One of the control groups consisted of 52 pregnant females with rheumatoid arthritis, nonspecific collagen diseases, or degenerative musculoskeletal disease who did not take aspirin or other compounds known to affect prostaglandin synthesis. The second control group consisted of 50 pregnant women without known disease who did not take therapeutic doses of aspirin or related drugs. The authors reported that subjects taking aspirin had an average gestation period of over 1 week longer than either of the control groups ($p < 0.025$) and that the control groups did not differ from each other. In the aspirin group, 42 percent of the subjects had gestation periods of greater than 42 weeks (at least 15 days post mature), while only 3 percent of the combined control group demonstrated this. The authors considered this result as very significant ($p < 0.0001$). The subjects in the aspirin group also had a significant longer mean length of labor than either of the control groups (12 hours versus 7 hours, p-value of less than 0.005) and had an estimated average blood-loss at delivery of 100 mL more than either of the control groups ($p < 0.025$).

The Panel evaluated a study by Collins and Turner (Ref. 8) in which two groups of pregnant women who self-medicated with analgesics regularly were compared to a group of matched controls. One group of subjects (constant takers) admitted to taking analgesics every day of their pregnancy. Many of the women in this group had self-medicated with analgesics for years and were habituated to analgesics. The constant takers took analgesic powders containing either aspirin, salicylamide, and caffeine or aspirin, phenacetin, and caffeine. The second group of self-medicated women (intermittent takers) admitted to taking analgesics at least once a week throughout their pregnancy. However, the authors reported that many of the women in this group took analgesics much more frequently than this, but denied taking them every day. The women in this group took the same analgesic powders or a variety of tablets containing salicylate alone or in combination with other drugs. None of the subjects took aspirin for chronic disease such as rheumatoid arthritis.

Collins and Turner reported that the major effects of regular aspirin consumption on pregnancy were an increased frequency of anemia during pregnancy, a prolonger gestation, an increased incidence of complicated deliveries, a high incidence of antepartum and postpartum hemorrhage and transfusion at delivery, and an increased perinatal mortality. The authors theorized that the observed effects may have been caused by the other constituents of the powders or by the fact that so many of the regular takers were heavy smokers. The authors stated, however, that the observed effects of the study were also explainable by the pharmacologic effects of aspirin.

The mean length of pregnancy of the two groups of women was significantly increased compared to the control group ($p < 0.05$). The authors of the study reported that women in the control group had a mean duration of pregnancy of 38.7 weeks while the women in the aspirin groups had a mean duration of pregnancy of 39.7 and 39.8 weeks, respectively. The proportion of subjects going beyond 42 weeks of pregnancy was increased but not significantly so. The authors stated that the inhibition of prostaglandin release by aspirin might be expected to delay the onset of labor and increase the mean length of labor.

The authors reported a highly significant increase in both prenatal and postnatal bleeding ($p < 0.001$). However, because the numbers in the survey were small, the findings in the present and past pregnancies of the women in the study were combined when assessing the incidence of antepartum hemorrhage, postpartum hemorrhage, and transfusion at delivery. The authors remarked that it was not possible to determine in each patient the time between the last dose of aspirin and delivery.

In a subsequent study (Ref. 9), Turner and Collins evaluated the effects of regular salicylate ingestion during

pregnancy on the infants of 144 mothers. Infants born to mothers who took salicylates daily during their pregnancy were compared to infants whose mothers took salicylates at least once a week and to a control group matched for age, parity, gravity, ethnic group, and social class. The authors reported that the birth-weights of infants born to mothers taking salicylates were significantly lower than those of the matched controls even after a correction for the mothers who smoked during the study. The perinatal mortality of these infants was increased. The authors reported that while a direct comparison between salicylate levels in maternal blood and cord blood was not possible because of inconsistencies in the sampling of maternal blood, high levels of salicylates in maternal blood corresponded to high salicylate levels in cord blood. However, no clinical signs of bleeding in the infants with increased salicylate blood levels were reported.

Bleyer and Breckenridge (Ref. 10) studied the effects of prenatal medications, including aspirin, on newborn hemostasis by the comparison of prenatal histories obtained from prenatal medication diaries with clinical and laboratory studies done postpartum. Forty-Three newborns, all born of healthy mothers after normal pregnancies and uneventful deliveries, were included in the study. A medication diary designed to provide an accurate record of all pharmacological agents taken during pregnancy was kept by each mother in the study and brought to the hospital at the time of delivery. Only after all clinical and laboratory data had been tabulated were the medication records opened and the mothers who had taken aspirin identified and allocated to the following groups. The drug group consisted of infants whose mother took more than 0.3 g of aspirin during the week prior to delivery. The dosage range for this group ranged from 0.32 g taken once 7 days before delivery to 1.3 g daily. The control group consisted of infants whose mothers had not taken aspirin in any form during the last 3 weeks of their pregnancy. Fourteen infants exposed to aspirin during the week prior to birth were compared to 17 infants in the control group. The authors of the study stated that they had chosen the above criteria based on information that had established that blood levels can be detected for 2 days or longer in adults and for as long as 7 days in neonates, and that a single small dose of aspirin (0.15 to 1.5 g) in normal adults can cause hemostatic abnormalities for as long as 7 days.

Umbilical cord and maternal blood samples were obtained at the time of delivery. All bleeding, including hemorrhage from circumcision, was recorded. Guaiac and fetal hemoglobin tests were performed on meconium from each newborn. A variety of laboratory tests relating to platelet function and number and clotting factor activities were performed on both the maternal and neonatal blood. The authors reported that maternal ingestion of aspirin was associated with the inhibition of collagen-induced platelet aggregation and diminished factor XII activity and noted that both were evidenced after ordinary doses of aspirin occurring in the newborn when the mother ingested as little as 0.65 g of aspirin as long as 2 weeks prior to delivery.

The authors stated that the diminished factor XII activity is of uncertain clinical importance but that aspirin-induced platelet dysfunction may have clinical relevance, particularly during difficult, traumatic deliveries or in the presence of another hemostatic defect such as von Willebrand's disease, hemophilia, or thrombocytopenia. They concluded that even though none of the newborns included in the study developed major hemorrhages, the hemostatic defects uncovered by the study are not necessarily benign, and recommended that until the clinical significance of the study finding is further evaluated, aspirin and other anti-inflammatory agents known to produce platelet dysfunction should be avoided when labor is imminent.

The Panel also noted a report (Ref. 11) by Haslam, Ekert, and Gillam of a case of a "life-threatening gastrointestinal hemorrhage" requiring two transfusions in one infant whose mother had taken calcium carbaspirin (3 tablets of 300 mg on each of the last 3 days of pregnancy, a total of 2,700 mg).

The more recent data address some of the Panel's concerns. As noted above, the studies by Brent, Shook, and Wilson on the effects of aspirin exposure in the third trimester and the last month of pregnancy (Refs. 3 and 4) included an evaluation of stillbirths, length of gestation, and length of labor. The authors reported that the data indicated that there was no statistically significant association between aspirin and still birth for aspirin exposure during the third trimester of pregnancy.

The unadjusted 3-month exposure data on the length of gestation from this study suggest that the average gestation period of 39.8 weeks for the unexposed group was significantly increased by 0.1 week for any exposed aspirin group ($p=0.004$) and decreased 0.2 week for the high dose aspirin group ($p=0.012$). However, the authors reported that the adjustment of the data for covariables by multiple regression indicated that the effect of aspirin alone does not significantly change the length of gestation in any of the three groups analyzed. The unadjusted data from the low and high dose aspirin use during the last month of pregnancy suggest a significant decrease in the length of gestation of 0.1 week for the high dose group ($p=0.022$) which is supported by the multiple regression analysis of the data. When the data were adjusted, statistically significant decreases were indicated for both groups (low dose mean decrease of 0.097 week, $p=0.014$; high dose mean decrease of 0.191 week, $p=0.0001$). The authors reported that the data were sufficient to detect a difference of 0.84 day (0.12 week) for the 3-month data and 0.7 day (0.1 week) for the 1-month data between the exposed populations and the unexposed populations, with a power of 90 percent or greater.

With regard to the length of labor, the authors reported that based on the unadjusted data none of the third-trimester aspirin exposure levels resulted in a statistically significant change in the mean delivery time of 7.7 hours for the unexposed group. However, they did report that the high dose data suggest an average decrease of 0.4 hour in length of labor, which was not significant. When the above data were adjusted for covariables, there was a small but statistically significant increase in the length of labor for the any-aspirin group (mean increase=0.467 hour, $p=0.042$) and for the high-dose group (mean increase=0.644 hour, $p=0.040$). In the last-month exposure data, no significant increase in the length of labor was found for the high-dose group, but the data for the low-dose group indicated an increase of 0.5 hour (unadjusted data) and 0.315 hour (adjusted) ($p=0.016$). The authors report that the data were sufficient to detect a difference of 18 minutes (0.3 hour) between any-aspirin users and nonusers, with a power of 90 percent or greater.

In the portion of the study in which the authors attempted to assess if there was a dose effect among differing aspirin groups, the authors compared the data (adjusted for covariables) on gestation from subjects with any exposure to aspirin to unexposed women and reported that aspirin alone did not increase the average gestation period. The authors further reported that when the 3-month high- and low-dose

groups were considered, the high-dose group had a slightly decreased gestation period (0.2 week). However, when these data were adjusted for covariables, the data did not indicate an aspirin effect on the length of gestation. The authors reported similar results when evaluating the subjects with exposure only in the last month.

No effect of aspirin on the length of labor was reported in the study when the unadjusted data from the any-exposure-to-aspirin group were compared to unexposed subjects. However, the adjustment of the data for covariables indicated that aspirin alone would be associated with a slight increase in the length of labor of about 28 minutes for the exposed groups. When dose during the last trimester was considered for this outcome, the high-dose aspirin group had an average labor of 24 minutes less than the unexposed group. When the data were adjusted for covariables, aspirin exposure along was indicated to be associated with an average increase of about 39 minutes. No difference was indicated for the low-dose group. Data from the last-month exposure groups indicated no increase for the high dose group but a slight increase for the low-dose group. Adjustment for covariables indicated that aspirin exposure alone was associated with an average increase of 21 minutes in the low-dose group, but there was no increase in the high-dose group.

In addition, the agency is aware of new uses of aspirin that have been reported in the scientific literature (Refs. 1 and 2). Schiff et al (Ref. 1) reported a prospective, randomized, double-blind, placebo-controlled study to investigate the capacity of aspirin to prevent pregnancy-induced hypertension and to alter prostaglandin metabolism in women at risk from these disorders. The results of the study indicated that the number of women in whom pregnancy-induced hypertension developed was significantly lower among women treated with 100 mg of aspirin daily during the last trimester of pregnancy (to within 0 days of delivery) than in the placebo group. The same result was reported for the incidence of preeclamptic toxemia. Based on this study, the authors concluded that low daily doses of aspirin taken during the third trimester significantly reduce the incidence of pregnancy-induced hypertension and preeclamptic toxemia of pregnancy in women at risk from these disorders.

Benigni et al. (Ref. 2) evaluated the effect of low-dose aspirin on the fetal generation of thromboxane by platelets in women at risk for pregnancy-induced hypertension. The authors reported that low doses (60 mg daily until delivery) of aspirin suppressed maternal platelet thromboxane B_2, but only partially suppressed neonatal platelet thromboxane B_2, thus allowing hemostatic competence of the fetus and newborn. The authors also reported that low doses of aspirin were associated with a longer pregnancy and an increased weight of newborns.

The agency concludes that the effects of these ingredients on maternal and fetal vascular and platelet prostaglandins have been demonstrated. These effects could be beneficial in some instances, e.g., pregnancy-induced hypertension, or under other circumstances could cause problems in some mothers and infants. These effects could lead to complications for some women during delivery, and these problems would be most likely to occur if aspirin were taken during the last trimester of pregnancy close to the time that delivery occurs. Although the agency has not yet evaluated these potential new uses of aspirin, the agency is concerned that a reference to bleeding as included in the proposed warning may discourage compliance with medically supervised uses of aspirin, e.g., the treatment of chronic arthritis, and therefore is not including a specific reference to bleeding in the new warning for these OTC drug products.

The agency notes that another OTC analgesic drug, ibuprofen, which is not currently included in the OTC drug review but is the subject of an approved new drug application, bears a similar warning, which states:

IT IS ESPECIALLY IMPORTANT NOT TO USE IBUPROFEN DURING THE LAST 3 MONTHS OF PREGNANCY UNLESS SPECIFICALLY DIRECTED TO DO SO BY A DOCTOR BECAUSE IT MAY CAUSE PROBLEMS IN THE UNBORN CHILD OR COMPLICATIONS DURING DELIVERY.

Both aspirin and ibuprofen are members of a class of drug ingredients known as non-steroidal anti-inflammatory drugs. The basis for the pharmacologic action of this drug class is their ability to inhibit the synthesis of prostaglandins (Ref. 12). The inhibition of prostaglandin synthesis is a critical factor with regard to the effects of aspirin on pregnancy. Aspirin and the other members of this class share similar effects on prostaglandin synthesis, and their effects on pregnancy are similar (Refs. 13 and 14). The agency now believes that having different warnings on OTC drug products containing these ingredients could cause consumers to perceive that there is a difference in the safety of using these ingredients during the third trimester of pregnancy when, in fact, there is no established significant safety difference.

For all of the above reasons, the agency has concluded that it would be advisable to include in the labeling of all OTC aspirin and aspirin-containing drug products a warning statement that it is especially important not to use these products during the last 3 months of pregnancy unless specifically directed to do so by a doctor and to inform pregnant women why they should not do so, i.e., because such use of the drug may cause problems in the unborn child or cause complications during delivery. Therefore, the agency is amending the pregnancy-nursing warning labeling requirement in § 201.63 to require that all oral and rectal OTC aspirin and aspirin-containing drug products bear a warning similar to that currently required for OTC ibuprofen drug products, as follows:

IT IS ESPECIALLY IMPORTANT NOT TO USE (select "ASPIRIN" or "CARBASPIRIN CALCIUM," as appropriate) "DURING THE LAST 3 MONTHS OF PREGNANCY UNLESS SPECIFICALLY DIRECTED TO DO SO BY A DOCTOR BECAUSE IT MAY CAUSE PROBLEMS IN THE UNBORN CHILD OR COMPLICATIONS DURING DELIVERY.

The agency is requiring that this warning immediately follow the general pregnancy warning required by § 201.63(a) and appear in boldface type and all capital letters.

The agency disagrees with the comments that contended that the proposed third-trimester warning is unnecessary when used in conjuction with the general pregnancy-nursing warning, that the two warnings used together would reduce the likelihood that consumers will follow the directions of the general warning, that the third-trimester warning would result in the inappropriate use of the OTC aspirin drug products during pregnancy, and that the two warnings used together may confuse and unduly frighten consumers. The general pregnancy-nursing warning regulation (§ 201.63(b)) provides that where a specific warning relating to use during pregnancy has been established for a particular drug, the specific warning shall be used in place of the general warning unless otherwise stated. In this particular situation, the agency concludes that each warning statement serves a specific purpose. The general pregnancy-nursing warning is intended to convey the message that at any time during pregnancy a consumer should seek the advise of a health professional

before using any OTC drug product. The third-trimester warning is intended to emphasize that it is especially important not to use these types of drugs during this time unless specifically directed to do so by a doctor. The agency has revised the proposed warning in this final rule to reflect that intent. Thus, the agency does not intend, in this case, for the third-trimester warning to be used in place of the general warning. The third-trimester warning is to be used in addition to the general warning. The final regulation specifically states this requirement.

The similar warning for OTC ibuprofen drug products has been in use for over 5 years. It too is used in conjuction with the general pregnancy-nursing warning. The agency has not received any reports that the use of both of these warnings has been confusing or frightening to consumers.

The agency is not adopting the warning recommended by the trade association which reads "Do not use this product during the last 3 months of pregnancy unless advised to do so by a doctor because it may cause problems during delivery." The agency concludes that the ibuprofen-type warning that has been adopted is more informative to consumers because it provides more information about the potential risks that may occur.

The agency believes that it is important that this new labeling information be brought to consumers' attention. In order to ensure that the new thrid-trimester pregnancy warning for OTC aspirin and aspirin-containing drug products is prominently displayed, the agency is requiring that the warning be printed on all labeling in boldface type and all capital letters. Based on the format of the new warning, the agency does not consider it appropriate to combine any portion of the warning with the general pregnancy-nursing warning statement. Further, the agency does not want the general pregnancy-nursing warning to appear in different wording in the labeling of OTC aspirin and aspirin-containing drug products. Therefore, the agency is not including in this final rule a provision that the two pregnancy-warning statements can be combined to eliminate duplicative words and phrases.

Further, the agency is not adopting the combined warning suggested by the comment that requested a hearing, which read, "As with any drug, if you are pregnant or nursing a baby, do not take unless directed by a doctor. This is particularly important for aspirin during the last three months of pregnancy since it may cause bleeding problems in mother or child." This combined warning would change the general pregnancy-nursing warning required by § 201.63. As noted above, the agency does not want this warning when used in the labeling for aspirin-containing products to be different than the warning that appears on all other OTC drug products intended for systemic absorption. In addition, "bleeding problems" are no longer included specifically in the warning; thus, the comment's suggested warning would not be appropriate to use. For these reasons, the agency concludes that the comment's request for a hearing is moots.

The effective date of this final rule is August 6, 1990. Although the regulation will become effective on that date, manufacturers of affected drug products will be permitted to defer labeling changes until July 5, 1991. Thereafter, covered OTC drugs initially introduced or initially delivered for introduction into interstate commerce will be required to comply with the new labeling requirement. The agency will consider requests for additional time to comply with the requirement based on a showing of good cause. Such requests should be sent to Office of Compliance, Center for Drug Evaluation and Research, HFD–300, Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857. Any request for additional time must state the reasons that the drug product's compliance with the labeling requirement cannot be achieved, steps that have been taken to achieved compliance, and when compliance is anticipated. Requests for additional time must be specifically granted by the agency; an extension of time will not be considered granted merely upon submission of a request. Manufactures are therefore encouraged to submit requests for extensions of time far enough in advance to allow the agency time to act on them.

References

(1) Schiff, E., et al., "The Use of Aspirin to Prevent Pregnancy-Induced Hypertension and Lower the Ratio of Thromboxane A_2 to Prostacyclin in Relatively High Risk Pregnancies," *New England Journal of Medicine*, 321:351–356, 1989.

(2) Benigni, A., et al., "Effect of Low-Dose Aspirin on Fetal and Maternal Generation of Thromboxane by Platelets in Women at Risk for Pregnancy-Induced Hypertension," *New England Journal of Medicine*, 321:357–362, 1989.

(3) Brent, R. L., J. Shook, and E. R. Wilson, "Analysis of the Data Base for the Collaborative Perinatal Project for Aspirin Use in Third Trimester and Stillbirth, Maternal Bleeding, Neonatal Bleeding, Length of Gestation, and Lenght of Labor," unpublished study in Comment No. C163, Docket No. 77N–0094, Dockets Management Branch.

(4) Brent, R. L., J. Shook, and E. R. Wilson, "Analysis of the Data Base for the Collaborative Perinatal Project: Aspirin Use Within Ten Days Before Delivery and Neonatal and Maternal Bleeding," unpublished study in Comment No. RPT3, Docket No. 77N–0094, Dockets Management Branch.

(5) Comments No. C182, Docket No. 77N–0094, Dockets Management Branch.

(6) Tuchmann-Duplessis, H., et al., "Effects of Prenatal Administration of Acetylsalicylic Acid in Rats, *Toxicology*, 3:207–211, 1975.

(7) Lewis, R. B., and J. D. Schulman, "Influence of Acetylsalicylic Acid, An Inhibitor of Prostaglandin Synthesis on the Duration of Human Gestation and Labour," *Lancet*, 2:1159–1161, 1973.

(8) Collins, E., and G. Turner, "Maternal Effects of Regular Salicylate Ingestion in Pregnancy," *Lancet*, 2:335–337, 1975.

(9) Turner, G., and E. Collins, "Fetal Effects of Regular Salicylate Ingestion in Pregnancy," *Lancet*, 2:338–339, 1975.

(10) Bleyer, W. A., and R. T. Breckenridge, "Studies on the Detection of Adverse Drug Reactions in the Newborn II. The Effects of Prenatal Aspirin on Newborn Hemostasis," *Journal of the American Medical Association*, 213:2049–2053, 1970.

(11) Haslam, R. R., H. Ekert, and G. L. Gillam, "Hemorrhage in a Neonate Possibly Due to Maternal Ingestion of Salicylate," *The Journal of Pediatrics*, 84:556–557, 1974.

(12) Shearn, M. A., "Nonsteroidal Anti-inflammatory Agents; Nonopiate Analgesics; Drugs Used in Gout," *in* "Basic & Clinical Pharmacology," 2d Ed., edited by B. G. Katzung, Lange Medical Publications, California, p. 400, 1984.

(13) Moncada, S., R. J. Flower, and J. R. Vane, "Prostaglandins, Prostacyclin, Thromboxane A_2 and Leukotrienes," *in* "The Pharmacologic Basis of Therapeutics," 7th Ed., edited by A. G., Gilman and L. S. Goodman, Macmillan Publishing Co., New York, p. 669, 1985.

(14) Fitzgerald, G. A., "Prostaglandins and Related Compounds," *in* "Cecil Textbook of Medicine," 18th Ed., edited by J. B. Wyngaarden, and L. H. Smith, W. G. Saunders Company, Philadelphia, p. 1276, 1988.

V. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of the final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). This final regulation imposes direct one-time costs associated with changing product labels to include the third-trimester pregnancy warning statement. FDA estimates those costs to total less than $5 million. Therefore, the agency has determined that the final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this final rule will not have a significant economic impact

on a substantial number of small entities as defined by the Regulatory Flexibility Act.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, subchapter D of chapter I of title 21 of the Code of Federal Regulations is amended in part 201 as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Sections 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 371, 374, 376); secs. 215, 301, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n, 264).

2. Section 201.63 is amended by adding new paragraph (e) to read as follows:

§ 201.63 Pregnancy-nursing warning.

* * * * *

(e) The labeling of orally or rectally administered OTC aspirin and aspirin-containing drug products must bear a warning that immediately follows the general warning identified in paragraph (a) of this section. The warning shall be as follows:

"IT IS ESPECIALLY IMPORTANT NOT TO USE" (select "ASPIRIN" or "CARBASPIRIN CALCIUM," as appropriate) "DURING THE LAST 3 MONTHS OF PREGNANCY UNLESS SPECIFICALLY DIRECTED TO DO SO BY A DOCTOR BECAUSE IT MAY CAUSE PROBLEMS IN THE UNBORN CHILD OR COMPLICATIONS DURING DELIVERY."

[sentence in bold face type and all capital letters]

Dated: May 23, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–15481 Filed 7–2–90; 8:45 am]

BILLING CODE 4160–01–M

federal register

Thursday
July 5, 1990

Part IV

Department of Education

Proposed Funding Priorities for the National Institute on Disability and Rehabilitation Research for Fiscal Years 1991–1992; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Proposed Funding Priorities for FYs 1991–1992

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for the National Institute on Disability and Rehabilitation Research for fiscal years 1991–1992.

SUMMARY: The Secretary of Education proposes funding priorities for several programs under the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Years 1991–1992. NIDRR intends to propose additional priorities for Fiscal Year 1992 at a later date.

DATES: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before August 6, 1990.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue SW., Switzer Building, Room 3422, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (telephone: (202) 732–1139). Deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the research programs of NIDRR is contained in section 204 of the Rehabilitation Act of 1973, as amended. Under these programs, awards are made to public and private nonprofit and for-profit agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. NIDRR may make awards for up to 60 months, through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, demonstrations, and related activities that lead to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

NIDRR regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 351.32). NIDRR invites public comment on the priorities individually and collectively, including suggested modifications to the proposed priorities. Interested respondents also are invited to suggest the types of expertise that would be needed for independent experts to review and evaluate applications under these proposed priorities.

NIDRR will review the comments received on these proposed priorities and will then announce final funding priorities, which will be based on the responses to this notice, available funds, and other Departmental considerations. The publication of these proposed funding priorities does not bind the Department of Education to fund projects under any or all of these priorities except as otherwise provided by statute. Funding of particular projects depends on both the final priorities and the quality of the applications received.

The following proposed priorities represent areas in which NIDRR proposes to support research and related activities through grants or cooperative agreements in four programs: Rehabilitation Research and Training Centers (RRTCs); Rehabilitation Engineering Centers (RECs); Research and Demonstration projects (R&D); and Knowledge Dissemination and Utilization projects (D&U).

Research and Demonstration Projects

Research and Demonstration projects support research and/or demonstrations in single project areas on problems encountered by individuals with disabilities and handicaps in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, emotional, recreational, economic, and other factors affecting the rehabilitation of individuals with disabilities.

Proposed Priorities for Research and Demonstration Projects

Involving People With Psychiatric Disabilities as Consumer Advocates in Vocational Rehabilitation

Psychosocial rehabilitation, an emerging modality for the rehabilitation of individuals with severe psychiatric disabilities, focuses on assisting people with long-term mental illness to develop their skills at decision-making, self-care, and self-determination while emphasizing normalization, less reliance on professional service providers, and other principles and practices that involve persons with severe psychiatric disability in their own rehabilitation. There is a need to identify proven strategies that involve members of this target population as advocates, planners, administrators, and implementers of service programs and to facilitate their contribution to improving vocational rehabilitation services for all persons with psychiatric disabilities. Partnerships of researchers and consumers are needed to identify effective models and the prerequisite organizational elements, demonstrate operational examples, and document outcomes.

This priority is based, in part, on recommendations from the Rehabilitation Services Administration Interagency Work Group on Psychiatric Rehabilitation, and on reviews of work completed or in progress on consumer advocacy in the broad field of mental health. The principles of psychosocial rehabilitation encourage substantial consumer involvement, and thus require an improved understanding on the part of consumers, advocates, clinicians, and other service providers of methods to most effectively involve consumers in developing and providing services. Further, the Best Practice Study of Vocational Rehabilitation Services to Severely Mentally Ill Persons (Policy Studies Associates, 1989) clearly identified the potential contribution of consumer-driven and operated services and recommended their use by vocational rehabilitation agencies.

An absolute priority is proposed for a project to:

- Review the current state-of-the-art in involving persons who have experienced severe psychiatric disability in key roles in advocacy, planning, information and referral, peer support, training, program administration, service delivery, evaluation, and related aspects of the provision of psychosocial vocational rehabilitation services;
- Demonstrate models to effectively involve individuals with severe psychiatric disabilities in the development of their own rehabilitation service plans and/or in the delivery of psychosocial rehabilitation services; and
- Develop materials, based on research findings, and provide technical assistance to enhance the capacity of a national cross-section of vocational and psychosocial rehabilitation agencies to facilitate the involvement of consumer-advocates in implementing psychosocial rehabilitation programs.

National Job Coach Study

Supported employment has become an important approach to the vocational rehabilitation of individuals with severe disabilities. A key element of the supported employment approach is the use of the job coach to provide employment-related support. There are indications that rehabilitation administrators need a better understanding of the role, function and status of the job coach (also called an

employment training specialist) in transitional and supported employment. A recent study (Rusch, 1988) found that job coaches in Illinois have varied educational backgrounds (34 percent baccalaureate degrees related to disability, 10 percent baccalaureate degrees unrelated to disability, 8 percent associate degrees, 4 percent masters degrees, 34 percent high school diplomas, and 10 percent from unknown backgrounds). The study also found that job coaches are paid relatively low salaries (mean $12,628 per year) and have a high turnover rate (46.5 percent terminated in one year). Although the total number of supported employment training specialists is unknown, serving individuals with severe disabilities in small, integrated settings as required by Federal regulations, has been accomplished largely through the use of these job coaches. The need for research on the employment condition of job coaches was highlighted by the Rehabilitation Services Administration's 1988 Forum on Supported Employment in Williamsburg, and the 1989 Supported Employment Forum in Washington, DC. The President's Committee on Employment of People With Disabilities Supported Employment Forum (May 1988) recommended national action to improve job coaching.

This proposed project will identify key facts about job coaches—pay, working conditions, experience, duties, career opportunities, and methods of coaching—that can be used to develop operational guidelines for recruiting, training, and retaining job coaches and to improve job coaching services for individuals with severe disabilities.

An absolute priority is proposed for a project to:

- Conduct public participation activities such as forums, workshops, hearings, and institutes involving persons with disabilities, job coaches, parents, employers, rehabilitation administrators, educators, and researchers in order to identify issues, best practices, alternative models, and outcomes for improving the use of job coaches;
- Analyze conditions affecting the role, status, and management of job coaches, including such issues as recruitment and hiring, pre-service and in-service training, position descriptions, merit and productivity review criteria, use of co-workers as job coaches, benefits and incentives, career paths and advancement, turnover, coaching resources, technology applications, and mechanisms for professional communication and exchange; and
- Convene a national conference, which has been planned and organized with the substantial involvement of job coaches, consumers, parents, or family members of persons with severe disabilities, administrators, and researchers, to represent project recommendations and findings for consideration at local, State, and national levels.

National Study of Transition of Individuals With Severe Disabilities Leaving School

Individuals with severe disabilities of all types leaving school often need additional services to help them enter and maintain adult roles, including independent living and employment. Many such persons however, may be unable to access these additional services in a timely manner. A recent analysis of data from the State of Maryland concluded that 11 percent of those leaving school with severe disabilities face uncertain futures due to discrepancies between their continuing service needs and the ability of adult service programs to meet their needs. (Ward, M. and Halloran, W., "Transition to Uncertainty: Status of Many School Leavers with Severe Disabilities," *CDEI*, 1989.)

Individuals involved in assisting youth to make the transition from school to adult life often allude to discrepancies between the needs of individuals leaving school and the availability of services. However, there are no definitive data regarding this alleged service gap, and a national study of this issue is needed to determine the extent to which such a gap exists.

Youth with severe disabilities leaving school often require coordinated services from education agencies, vocational rehabilitation agencies, and community-based service providers. Some States and agencies may have more effective systems that others for assigning priority to youth with severe disability in transition, as well as other approaches to eliminate or reduce any gaps in services. A national study of specific policies and practices for coordinating transition services would provide information regarding effective intervention.

The study will include a survey to determine the magnitude of the problem of service gaps, an analysis of existing policies and practices, and case studies of States whose current policies or practices deliver effective transition services for youth with severe disabiliities. The project should consider the use of problem-solving techniques that include youth and adults with disabilities who have experienced both gaps in services and successful transitions.

An absolute priority is proposed for a project to:

- Analyze transition problems of youths with severe disabilities in several States in order to document the magnitude and characteristics of any service gaps that may exist;
- Identify States that have exemplary policies, administrative practices, and funding strategies that facilitate the transition of students with severe disabilities into employment and related adult outcomes;
- Develop a framework for model State transition policies and practices appropriate for the range of problems facing States; and
- Conduct a variety of appropriate information exchange activities to encourage States to develop policies that will facilitate timely access to adult services and thus improve transition outcomes for youth with severe disabilities.

Alcohol and Substance Abuse as Barriers to Job Re-Entry for Persons with Traumatic Brain Injury

There is a serious problem of substance (alcohol and drug) abuse and addiction among persons who have experienced traumatic brain injury (TBI). Individuals who have experienced TBI often have residual functional difficulties in short-term memory, decision-making, social skills, communicating, problem solving, and relating to family members and friends. Consequently, many interventions which have proven effective in assisting people with substance addictions have not helped persons with TBI. Treatment and support interventions, particularly for early problem identification and to assist family members of TBI survivors, are needed in order to help individuals with TBI avoid or overcome addictions and continue their rehabilitation programs for return to work.

Alcohol and other substance addictions of persons with TBI were identified as major problems at the November 1987 NIDRR National Invitational Conference on Traumatic Brain Injury and at the February 1989 University of Wisconsin-Stout's Clearwater Beach Conference on Community-Based Employment for Persons with TBI. A recent article in Alcohol Health & Research World (1989) titled "Alcohol Abuse and Traumatic Brain Injury" identified the need for improved case management, research, and education on this problem. Progress reports from NIDRR's Research and Development projects on supported employment for persons with TBI have identified addictive behavior as a major

barrier to their return to work. The National Head Injury Foundation has recommended national action on this topic, including the effects on family members of substance abuse by persons who have survived TBI.

An absolute priority is proposed for a project to:

- Develop, field test, and evaluate appropriate treatment and support interventions to prevent or ameliorate substance abuse for persons who have experienced traumatic brain injury and their families;
- Prepare program materials for use by rehabilitation counselors, job coaches, teachers, psychologists, employers, family members, and consumers in their efforts to reduce substance abuse among individuals with TBI;
- Develop model referral procedures, guidelines for the use of general alcohol and substance abuse treatment resources by the TBI population, strategies for avoiding second injuries consequent to substance abuse, and measures of program outcomes and effectiveness; and
- Disseminate project findings to rehabilitation and addiction programs, to medical programs in TBI, and to professional and consumer organizations dealing with traumatic brain injury.

Case Management in the Vocational Rehabilitation of Persons With Psychiatric Disability

"Case management" has frequently been identified as essential for providing outcome-oriented, individualized, continuous assistance to persons with psychiatric disability whose complex needs require the services of a gamut of agencies over long periods of time (Robinson and Bergman, 1989; Gowdy and Rapp, 1989; Rapp and Wintersteen, 1989). "Best practices" in vocational rehabilitation for persons with psychiatric disability incorporate case management features such as specialized caseloads, post-employment services, interagency coordination of vocational rehabilitation with other service systems, and extension of the role of the job coach to accommodate the special need of persons with severe psychiatric disability (Policy Studies Associates, 1989). Despite the widespread agreement on the value of case management approaches, administrators have few proven case management models and little guidance on their implementation.

Questions frequently asked by managers of mental health rehabilitation programs include the following: How do case management approaches in mental health and vocational rehabilitation compare? What are the mental health case management functions of a job coach? What are the vocational support functions of a mental health case manager? Can peer, family, and co-worker support activities serve case management functions? How do case management needs change after employment? When and how should case management start, stop, or transfer lead responsibility between mental health and vocational rehabilitation agencies?

There is a need for research to examine case management practices in the vocational rehabilitation of persons with psychiatric disability in order to identify feasible, effective models and specify crucial cost, staffing, skills, and administrative components.

An absolute priority is proposed for a project to:

- Analyze case management practices and models for vocational rehabilitation of persons with psychiatric disability, including analyses of costs, effectiveness, staffing, interagency coordination, and the roles of peers, co-workers, and family members;
- Compare and contrast case management functions and responsibilities in mental health and vocational rehabilitation (MH/VR) service systems from the time of initial vocational assistance to persons with psychiatric disability through periods of their sustained employment to compile longitudinal data that will assist MH/VR agencies to adapt or adopt appropriate program features that foster greater employment stability among their clients; and
- Prepare research monographs, presentations, training materials, and journal articles for dissemination of project findings to MH/VR agencies and other relevant audiences.

Health Care Policy and Rehabilitation

The health care system in the United States is undergoing substantial changes, not the least of which are in the mechanisms for delivering and financing medical care. Many of the new developments in the delivery of health care services are based on models for acute care or communicable diseases services and fail to take into account the long-term medical and rehabilitation needs of persons with the most severe disabilities. At present, disabled populations are either ignored or forced into modes of care that may be inappropriate or unresponsive to their needs.

The purpose of this priority is to generate new knowledge to resolve important health care policy issues that have an impact on the delivery of medical rehabilitation/physical restoration services. Issues that require study in this area include: The costs and efficacy of rehabilitation services and specific rehabilitation modalities; the impact of various innovative payment methods on rehabilitation hospitals and regional service delivery systems, e.g., Model Spinal Cord Injury projects; and the development of new and innovative methods of delivering comprehensive medical rehabilitation services that include identification of financial and administrative characteristics.

An absolute priority is proposed for a project to:

- Identify innovative models of resource consumption, using established and recognized functional outcome measures, to serve as a basis for prospective and other payment systems in rehabilitation medicine services;
- Demonstrate and evaluate the feasibility of using functionally-based models for payment systems, with emphasis on appropriate classification schemes that include such factors as severity, progress during rehabilitation, and outcome compared to admission status;
- Analyze variations in patterns of resource utilization during acute rehabilitation and identify the variables that influence these changes;
- Determine the relationship between changes in functional status and patterns of resource utilization during acute in-patient rehabilitation; and
- Identify and evaluate factors in various payment models that contribute to the quality of care during acute in-patient medical rehabilitation.

Rehabilitation Research and Training Centers

Authority for the Rehabilitation Research and Training Centers programof NIDRR is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended. Under the RRTC program, awards are made to institutions of higher education, or to public and private organizations, including Indian tribes and tribal organizations, that are affiliated with institutions of higher education.

RRTCs conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. NIDRR's regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities

(see 34 CFR 352.32). A program of RRTCs has been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination training must be accessible to individuals with a range of handicapping conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers must also conduct state-of-the-art studies in relevant aspects of their priority areas. Each RRTC must also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

Proposed Priorities for Rehabilitation Research and Training Centers

Rehabilitation of Blind and Visually-Impaired Individuals

The National Health Interview Survey (LaPlante, 1988) indicates that there are approximately 600,000 men and women between the ages of 18 and 69 whose work activities are limited due to visual disabilities, including blindness, glaucoma, cataracts, and other visual impairments. Of this group, about 405,000 individuals are unemployed. A significant number of the remaining 195,000 individuals are underemployed.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches designed to improve services for this population. A Center in this area should develop models for the effective delivery of rehabilitation services in the areas of career preparation, placement, and career advancement. The Center will assist rehabilitation service delivery systems to adapt to the changing needs of blind and visually-impaired individuals for career preparation and enhancement, either by restructuring service programs, retraining staff, or implementing new service techniques.

An immediate objective for the Center is to assist service delivery agencies to make better use of the information that is available, including research data, models of career preparation, placement, retraining, and advancement, and standards and guidelines that have been developed to guide rehabilitation efforts for this population. Over the longer term, it is important to develop better rehabilitation service delivery models that are based on field and laboratory research, and tested by blind and visually-impaired persons in regular use. One prerequisite to improving rehabilitation services in a comprehensive way is to assist those who design, manage, and provide training, placement, and employment services to become aware of the potential for creating more accessible environments for this population through the use of technology, adaptive viewing devices, and related accommodations.

A critical element of any Center to be funded under this priority will be the involvement of individuals who are blind and those with low vision and their advocates in the planning, conduct, and review of Center activities. All instruments, program descriptions, training materials and courses, databases, and technical assistance materials produced by the Center must be developed in formats that are accessible to individuals with various types of visual impairments. The Center will develop a national database in this field of activity and serve as a central repository of information on the rehabilitation of persons with blindness and visual impairments.

An absolute priority is proposed for an RRTC to:

- Identify and analyze existing career preparation and placement service programs and systems for persons who are blind or visually impaired, and, when needed, develop new and innovative services and service delivery systems for enhancing the rehabilitation of this population;
- Develop research-based models for and conduct training to enhance the capabilities of blind and visually-impaired persons, including those from racial and ethnic minorities and women, to develop their rehabilitation plans, select career goals, and match personal abilities and expectations to changing vocational opportunities in the labor market;
- Develop strategies and techniques to enhance coordination and cooperation between secondary and postsecondary educational institutions and vocational rehabilitation agencies to assist both visually-impaired persons and their employers in the process of transition from school to work;
- Analyze methods to increase job retention among this population, including strategies such as job-site modification, job restructuring, cooperative efforts with organized labor, and retraining;
- Develop and test technical assistance and training for rehabilitation agencies, business and employer associations, and consumer groups to promote the employment, retention, and advancement of blind and visually-impaired workers;
- Analyze the cost-effectiveness and quality of life factors in different rehabilitation delivery systems, including Comprehensive Rehabilitation Centers, for individuals who are blind or visually impaired, including individuals in different age groups, from racial and ethnic minorities, women, and both rural and urban residents;
- Develop and disseminate model curricula for training vendors in the Business Enterprise Program (BEP), model program operation manuals for BEP supervisors, and model BEP marketing programs for people who are blind, for building supervisors, and for rehabilitation service providers, with an emphasis on expanded representation of women and minorities;
- Identify the appropriate use of, and instruction in, Braille, optical devices and technologies that could contribute to the higher literacy level necessary for various types of employment.
- Develop and maintain a national research database on the career preparation, placement, and advancement of blind and visually-impaired persons, and serve as a Center for current information concerning this population and the professional personnel, programs, and related resources available to assist in rehabilitation efforts on their behalf;
- Provide advanced training for predoctoral, postdoctoral, and professional practitioners in the

rehabilitation of blind and visually-impaired persons, with an emphasis on recruiting blind and visually-impaired persons for that training;

• Provide advanced training in research in fields pertinent to the rehabilitation of blind and visually-impaired individuals, with emphasis on recruiting blind and visually-impaired individuals and individuals from other underrepresented populations for that training;

• Conduct at least one national study of the state-of-the-art to identify current knowledge and recommend future research; and

• Organize and conduct research and training conferences and short-term institutes in cooperation with professional and consumer organizations in order to disseminate Center findings and products on an annual basis.

Rehabilitation of Deaf and Hearing-Impaired Individuals

Individuals with hearing impairment comprise the single largest chronic physical disability group in the United States, numbering an estimated 21 million Americans (National Center for Health Statistics, "Data Reports", Series 10, No. 160, 1987.) The unpublished data from the combined 1979–1980 Health Interviews Surveys indicate that over 26 percent of those whose only disability is hearing impairment report themselves to have activity limitations, while those who also have other chronic conditions or impairments are twice as likely to report functional limitations. (Mathematica Policy Research, Digest of Data on Persons with Disabilities, 1984.) This segment of the population presents major challenges to public rehabilitation efforts on their behalf.

An RRTC is proposed to address the rehabilitation needs of this population, particularly those individuals who are profoundly deaf or have significant hearing impairments. A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches designed to improve services for this population. In particular, an RRTC is needed to develop models for effective delivery of rehabilitation services in the areas of career preparation, placement, and career advancement. The Center will assist rehabilitation service delivery systems to adapt to the changing career preparation and enhancement needs of deaf and hard-of-hearing persons, whether by restructuring service programs, retraining staff, or implementing new service techniques.

An immediate objective is to make better use of the information that is available, including research data, models of career preparation, placement, retraining, and advancement, and standards and guidelines that have been developed to improve rehabilitation efforts for this population. Over the longer term, it is important to develop better rehabilitation service delivery models that are based on field and laboratory research, and tested by deaf and hard-of-hearing persons in regular use, including those from racial and ethnic minorities. One prerequisite to improving rehabilitation services in a comprehensive way is to assist those who design, manage, and provide training, placement, and employment services to become aware of the potential for creating more accessible communication environments for this population through the use of interpreters, adaptive listening devices, and related accommodations.

A critical element of any Center to be funded under this priority will be the involvement of individuals who are deaf and those who are hard-of-hearing in the planning, conduct, and review of Center activities. All instruments, descriptions, training materials and courses, databases, and technical assistance developed by the Center must be provided in formats that are accessible to individuals with various types of hearing impairments. The Center will develop a national database in this field of activity and serve as a central repository of information on the rehabilitation of persons with severe-to-profound hearing impairments. The Center also is expected to cooperate with the RRTC on Low-Functioning Deaf Individuals, funded in 1990, to share information and findings, and to consider coordinated research studies and training activities.

An absolute priority is proposed for an RRTC to:

• Identify and analyze existing career preparation and placement service programs and systems for persons who are deaf or hard-of-hearing, and, when needed, develop new and innovative services approaches and systems to enhance the rehabilitation of this population;

• Conduct research and training to enhance the capabilities of deaf and hard-of-hearing persons, including those from racial and ethnic minorities and women, to develop rehabilitation plans, select career goals, and match personal abilities and expectations to changing vocational opportunities in the labor market;

• Develop strategies and techniques to enhance coordination and cooperation between secondary and postsecondary educational institutions and vocational rehabilitation agencies to improve the transition from school to work for deaf and hearing-impaired persons;

• Develop an employment profile of the deaf and hard-of-hearing populations and identify the skills necessary for job entry, advancement, retention, and satisfaction for this population in the year 2000;

• Develop models of technical assistance and training for rehabilitation agencies, business and employer associations, and consumer groups in methods to stimulate the hiring, retention, and advancement of deaf and hard-of-hearing workers;

• Investigate the special problems and needs that professionals, support personnel, and families encounter in their efforts to facilitate the independence, and personal, social, cultural, and career adjustment of deaf and hard-of-hearing persons in both urban and rural settings, and develop effective models for the provision of support services;

• Develop and maintain a national research database on the career preparation, placement, and advancement of deaf and hard-of-hearing persons, and serve as a Center of current information concerning this population and the professional personnel, programs, and related resources available to assist in rehabilitation efforts on their behalf;

• Provide advanced training for predoctoral, postdoctoral, and professional practitioners in the rehabilitation of deaf and hard-of-hearing persons, with an emphasis on recruiting persons who are hearing-impaired for the training;

• Provide advanced training in research in fields pertinent to the rehabilitation of deaf and hard-of-hearing persons, with emphasis on recruiting individuals who are hearing-impaired and individuals from other underrepresented populations for this training;

• Conduct at least one national study of the state-of-the-art to identify current knowledge and recommend future research; and

• Organize and conduct research and training conferences and short-term institutes in cooperation with professional and consumer organizations in order to disseminate Center findings and products on an annual basis.

Cardiovascular Rehabilitation

There are 1.4 million new myocardial infarctions each year in the United States, with 700,000 individuals

surviving the acute incident. In addition, many newly identified coronary artery disease patients are undergoing angioplasty and by-pass surgery and are in need of comprehensive and effective rehabilitation to stay on the job and to maintain independence in daily life. Given the extent of the problem of cardiovascular disease and infarctions, and their serious disabling consequences, the rehabilitation field would benefit from a Center that will develop and implement well-designed studies in clinical outcomes, patient evaluation, and rehabilitation interventions, as well as education and training programs, in order to promote comprehensive rehabilitation for the population affected by these conditions.

The conceptual basis for this proposed priority was the work of the American College of Cardiology Bethesda Conference No. 20 (October, 1988) on the rehabilitation and employability of the patient with ischemic heart disease.

An absolute priority is proposed for a Center to:

- Develop improved methods to assess functional outcomes and evaluate disease paramenters in individuals with coronary heart disease, including individuals who have had angioplasty and bypass surgery;
- Identify and evaluate intervention models to reduce impairment and disability in individuals with coronary heart disease, including those whose rehabilitation and medical management are complicated by peripheral vascular or hypertensive disease;
- Document the natural course of cardiovascular and coronary heart disease in individuals with physical disabilities, including neurologic and musculoskeletal disorders that impair ambulation and physical function;
- Develop and evaluate rehabilitation methods and techniques to assist older persons with coronary heart disease or cardiovascular impairment to remain employed and functionally independent;
- Develop protocols for collaborative research on the evaluation of cardiovascular disability and the development of interventions to promote optimal functional recovery and rehabilitation;
- Develop a professional education and training program in cardiovascular rehabilitation and a public education program in order to enhance rehabilitation understanding and outcomes;
- Provide advanced training in research in fields related to the rehabilitation of individuals with cardiovascular impairment, with an emphasis on recruiting individuals from underrepresented populations, including individuals with disabilities, minorities, and women, for that training; and
- Serve as a national resource and information center for the rehabilitation field in matters relating to cardiovascular rehabilitation and related research.

Rehabilitation Engineering Centers

Authority for the Rehabilitation Engineering Center (REC) program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended. Under this program, awards are made to public and private organizations, including institutions of higher education, Indian tribes, and tribal organizations to conduct coordinated programs of advanced research of an engineering or technological nature. RECs also work to develop systems for the exchange of technical and engineering information and to improve the distribution of assistive devices and equipment to individuals with disabilities. Each REC must be located in a clinical setting and is encouraged to collaborate with institutions of higher education in the conduct of a program of research, scientific evaluation, and training that advances the state-of-the-art in technology or its application. Each Center is expected to contribute substantially to the solution of rehabilitation problems through developing practical applications for their research and through scientific evaluation to validate the findings of their research and that of other Centers. RECs generally conduct both academic and in-service training to disseminate and encourage the use of new rehabilitation engineering knowledge, and to build capacity for engineering research in the rehabilitation field. Each REC must ensure that all training materials developed by the Center are presented in several formats that will be accessible to individuals with various types of sensory and mobility impairments.

NIDRR will conduct, not later than three years after the establishment of any REC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment in accordance with the provisions of 34 CFR 75.253(a).

Priority for Rehabilitation Engineering Center

Technology for Older Persons With Disabilities

The prevalence of medical, neurological and orthopedic impairments increases with the age of the population. Common conditions in the older population that frequently result in disability include arthritis, stroke, pulmonary disease, hip fractures, Alzheimer's disease, and deficits in vision and hearing. (Breuer, 1982; Haber, 1986). It is estimated that half of all Americans over seventy years of age have one or more disabilities. (Williams 1986). The frequency of multiple disabilities is also much higher in the older population (Breuer, 1982; Williams, 1986).

Technology has been used in rehabilitation to help reduce the adverse effects of impairment and disability. Technology, however, has not been widely used to solve problems in geriatric rehabilitation.

A new REC to be funded in this area will emphasize technological solutions to the special needs of older persons that are a consequence of the aging process as it produces functional limitations similar to those experienced by persons of all ages with disabilities. At the same time, the Center must be concerned with applications of technology to mitigate the effects of the aging process on persons who have disabilities.

The older person often has problems unique to an older population that must be considered in the application of technological solutions. First, many devices or techniques aimed at ameliorating specific disabilities are designed to augment or take advantage of compensatory abilities. However, multiple and gradual changes related to aging may leave older persons without one or more areas of strength with which to compensate for other functional losses. For example, an older person requiring a wheelchair, because of gradual loss of muscle mass, may not have, or may not be able to develop, the requisite arm strength to use the grab bars.

Second, many older persons who experience problems with daily living in their houses or apartments do not consider themselves to be disabled. Because they don't view their problems as disabilities, they neither perceive nor accept the need for adaptive technologies, and are less likely to seek technology-related assistance.

Finally, the development of technological solutions to functional limitations of older persons is often focused on the disability as a characteristic of the individual rather than an artifact of the person-environment interaction.

Efforts to develop and disseminate technological aids to older persons with

functional limitations must be conducted in the context of using different dissemination media and service systems to reach older persons, and with a sensitivity to the need for accurate prescriptions, appropriate training in the use of the technology that is prescribed, and followup to assure that desired outcomes are achieved.

One study of 500 older persons who owned technological aids (Page, Galer, Fitzgerald, and Feeny, 1980) found that about 50 percent of them did not use their aids because the devices had been inaccurately prescribed, did not work, were unsafe or broken, or because the individual regarded the disability as a minor inconvenience that he/she would rather accept than try to overcome.

Other studies have emphasized the need for more sensitive and more selective criteria for assessing the need for assistive technology; a need for assessments for aids to take place in the usual living environment or in a facsimile situation; a need to understand that the selection of the appropriate aid is critical to the consumer's expectations; that adequate training in the use of an aid is vital; and that followup visits are necessary to ensure that the aids are used and function well in the daily milieu. NIDRR has also identified a need for better-designed assistive technology, more information about assistive technology, and improved methods for the maintenance of assistive devices for older persons.

According to Childress (1986), the most effective deployment of technology is to prevent the need for assistive devices in the first place. He states that using simple technical aids to prevent serious injuries and the resulting disabilities can be a major factor in maintaining functional independence.

The appropriate infrastructure for delivery of assistive technology to this population has not yet been determined, and the delivery system is one of the most important barriers to optimal use of assistive technology by older persons with disabilities. Users of all ages and experts have expressed difficulties in acquiring new technologies. Evaluation research has identified the communication gap between reimbursement decision-makers unfamiliar with innovative rehabilitation technologies and product designers and developers unfamiliar with the process of how users actually acquire these technologies. (Englehardt and Leifer, 1983).

Research, development, and dissemination of information by the Center must address the needs of older individuals who are typically underserved, including those from ethnic, racial, and linguistic minorities, rural areas, or congregate care settings. Older persons, including older persons with disabilities, must be involved in the planning, conduct, and review of Center activities. Any Center to be funded under this priority must coordinate and share information with NIDRR-funded RRTCs on Rehabilitation and Aging, and with programs funded under the Technology-Related Assistance for Individuals with Disabilities Act of 1988.

An absolute priority is proposed for a Center to:

- Examine the relationship between the older individual and the environment to determine strategies to adapt the environment to improve the quality of life for older persons with disabilities;
- Develop and evaluate assistive technologies that are less sophisticated, more easily repairable, easier to use, less expensive, and more appropriate for and more acceptable to older persons;
- Explore various strategies to enhance the use of available assistive devices by using the knowledge, personnel, devices, and information sources available through the rehabilitation field;
- Explore various strategies for strengthening public-private sector partnerships in marketing to, and in the purchase and use of assistive devices by, older individuals with disabilities.
- Develop and disseminate new knowledge about the prevention of disabilities through the appropriate use of assistive devices;
- Develop and deliver training and technical assistance to service providers in both rehabilitation and general services to older persons, and to consumers, on sources and use of assistive devices and other technological applications to problems of functional loss caused or exacerbated by aging; and
- Provide, either directly or through collaboration with other institutions, advanced training in research in rehabilitation technology to meet the needs of older persons, with special emphasis on recruiting individuals from underrepresented populations such as individuals with disabilities, minorities, and women, for that training.

Knowledge Dissemination and Utilization Program (D&U)

Knowledge Dissemination and Utilization (D&U) projects ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities. The authority for this program is contained in section 202 and 204(a) and (b)(5) of the Rehabilitation Act of 1973, as amended.

Proposed Priority for Knowledge Dissemination and Utilization Program

Regional Information Exchange

As part of its effort to disseminate new knowledge on improved rehabilitation practices, NIDRR seeks to promote the widespread use of validated exemplary practices in rehabilitation in order to improve the service delivery system for individuals with disabilities. Many of these exemplary programs were developed at the "grassroots" in communities; others emerged as a result of research sponsored by NIDRR or other agencies. NIDRR proposes to address this objective by establishing one or more Regional Information Exchanges.

A Regional Information Exchange (RIE) is intended to facilitate the adoption of exemplary program models that were developed within the locality or region of the adopting agency.

The RIEs must identify and validate exemplary programs within the established priority areas, "market" the model programs to potential adopting agencies, and provide technical assistance in the adoption or adaptation of the model.

Priority areas for RIE diffusion efforts during the period of this priority, include: emergent issues in supported employment programs, such as the involvement of co-workers, obtaining long-term funding support for individuals, and appropriate family involvement; interagency collaboration and coordination in programs for transition from school to work; parent-professional collaboration in the integration of individuals with disabilities in education, community living, and employment; strategies for assisted housing for individuals with long-term mental illness; application of rehabilitation principles in generic services to elderly persons with disabilities in order to promote and maintain independence; and model programs for the delivery of rehabilitation engineering services in vocational rehabilitation agencies.

The RIE programs are restricted to the diffusion of carefully validated model programs in one or more of the designated priority areas, and must provide necessary technical assistance to facilitate the successful adoption or adaptation of the exemplary programs. Each RIE will work within its designated region, as defined in the grant application and cooperative agreement, and must demonstrate the

appropriateness of the selected region for diffusion of exemplary programs in the specified priority areas.

An absolute priority is proposed for a project to:

- Develop a process for identifying exemplary programs, including criteria, a methodology for data collection, and evaluation instruments that include measurements related to the identified criteria;
- Solicit nominations of exemplary programs in the priority area(s) from program operators, consumer organizations, and other relevant parties in the region, giving consideration to the inclusion of demonstration projects funded by NIDRR, the Rehabilitation Services Administration, the Office of Special Education Programs, and other Federal agencies;
- Develop and implement a procedure to validate exemplary programs in the region in the specified priority areas, involving individuals with disabilities and technical experts in the validation process, and document the methodology and findings of the validation process;
- Develop and implement strategies to make the wide audience of rehabilitation service providers and special educators aware of the exemplary programs and stimulate their interest in adopting or adapting similar models, with the assistance of the RIE;
- Develop and maintain a cadre of expert consultants in the RIE's priority areas and in the general area of knowledge transfer who can facilitate the adoption or adaptation of exemplary programs;
- Facilitate the exchange of technical assistance between the exemplary program and the requesting adopter program through onsite demonstrations, training materials, and direct consultation; and
- Maintain appropriate data on the activities of the RIE to support an evaluation of its effectiveness.

Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Nos. 84.133A, 84.133B, 84.133D, and 84.133E, National Institute on Disability and Rehabilitation Research)

Dated: May 15, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–15502 Filed 7–3–90; 8:45 am]

BILLING CODE 4001–01–M

federal register

Thursday,
July 5, 1990

Part V

The President

Presidential Determination No. 90-28—Romania; renewal of trade agreement

Federal Register

Federal Register
Vol. 55, No. 129
Thursday, July 5, 1990

Presidential Documents

Title 3—

The President

Presidential Determination No. 90–28 of July 3, 1990

Renewal of Trade Agreement With Romania

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I have determined that actual or foreseeable reductions in United States tariffs and nontariff trade barriers resulting from multilateral negotiations are satisfactorily reciprocated by Romania. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and Romania.

These determinations and findings shall be published in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, July 3, 1990.

[FR Doc. 90–15806
Filed 7–3–90; 12:16 pm]
Billing code 3195–01–M

Reader Aids

Federal Register

Vol. 55, No. 129

Thursday, July 5, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

460.....27633
461.....27633

3 CFR

Proclamations:
5805 (Amended by Proc. 6152).....27441
6142 (Amended by Proc. 6152).....27441
6151.....27171
6152.....27441
Executive Orders:
12718.....27451
Administrative Orders:
Presidential Determinations:
No. 90-19 of April 26, 1990.....27627
No. 90-23 of June 21, 1990.....27629
No. 90-24 of June 21, 1990.....27631
No. 90-28 of July 3, 1990.....27797
Memorandums:
June 6, 1990.....27453

5 CFR

430.....27760
2637.....27179, 27330
2638.....27179

7 CFR

301.....27180
400.....27182
910.....27182
928.....27184
Proposed Rules:
29.....27249

10 CFR

Proposed Rules:
2.....27645

12 CFR

208.....27762
225.....27762
563.....27185
563b.....27185

13 CFR

120.....27197
121.....27198
Proposed Rules:
121.....27249

14 CFR

13.....27547
39.....27200, 27330, 27457, 27458
71.....27460
Proposed Rules:
39.....27470-27473
71.....27474

15 CFR

771.....27760
774.....27760
779.....27760
786.....27760
787.....27760
799.....27760

17 CFR

401.....27461

21 CFR

201.....27776
1316.....27464
Proposed Rules:
58.....27476

23 CFR

Proposed Rules:
630.....27250
1327.....27251

24 CFR

50.....27598
200.....27218
203.....27218
885.....27223
961.....27598
Proposed Rules:
888.....27251
3282.....27252

26 CFR

Proposed Rules:
1.....27598, 27648

27 CFR

Proposed Rules:
9.....27652

30 CFR

901.....27224
Proposed Rules:
710.....27588
901.....27255
935.....27256

32 CFR

199.....27633
289.....27225

33 CFR

4.....27226
110.....27464
146.....27226

36 CFR

1220.....27422, 27426

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 3, 1990